


Memorandum

MIAMI-DADE
COUNTY

Date: September 18, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(A)(1)

From: Carlos A. Gimenez
County Mayor 

Subject: Award Recommendation for the Request for Proposals for Non-Exclusive
Management Agreement for the Operation of Club America Private
Lounges at Miami International Airport, RFP No. MDAD-04-11

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the award of a Non-Exclusive Management Agreement (Agreement) between Miami-Dade County (County) and Gideon Toal Management Services, LLC. (Gideon) for the Operation of the Club America Private Lounges at Miami International Airport (MIA), and authorize the Mayor or his designee to execute the attached Agreement.

SCOPE

MIA is located primarily within Commission District Six, Rebeca Sosa; however, the impact of this item is countywide as Miami International Airport (MIA) is a regional asset.

DELEGATED AUTHORITY

In accordance with Miami-Dade County Code Section 2-8.3 related to identifying delegation of Board authority contained within the subject agreement, the Aviation Director or designee has the authority to exercise the renewal options and to terminate the Agreement.

FISCAL IMPACT/FUNDING SOURCE

It is estimated that the Agreement will generate \$4.6 million in annual gross revenues with a net annual return to Miami-Dade Aviation Department (MDAD) of approximately \$1 million or 22 percent after payment of management fees and operating expenses. This is based on gross revenues for the seven-year term of the Agreement plus three one-year renewal options estimated at \$46 million, with management fees and operational expense totals of \$36 million. The annual management fee to be paid to Gideon is \$219,600 and is included within the \$36 million.

TRACK RECORD/MONITOR

Gideon does not have any prior experience working with Miami-Dade County; however, Gideon has years of experience in numerous airport lounge operations and services. This experience includes managing the clubs for United Airlines at Dallas Fort Worth, Atlanta, Austin, Cleveland, Las Vegas, San Antonio and Ft. Lauderdale airports. Staff at United and at McCarran International Airport report they are pleased with Gideon's services and that they have been very responsive to their requests. Ray Diaz, MDAD Chief of Commercial Operations, will monitor this Agreement.

DUE DILIGENCE

Pursuant to Resolution No. R-187-12, due diligence was conducted to determine Gideon's responsibility; including verifying corporate status and that no performance or compliance issues exist. The lists that were reviewed include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to Gideon's responsibility.

BACKGROUND

A Request for Proposals (RFP) was advertised on September 16, 2011 for qualified firms to propose on the opportunity to operate, manage, and maintain first-class Club America private lounges at MIA 365 days a year. The Clubs, located in Concourses F and J, are private, independent, nonaligned airport lounges which offer passengers a full complimentary bar, as well as sandwiches, snacks, local phone service, flight monitors, newspapers, fax, copier, scanner and a business center with private work station desks, and free wireless internet access.

The Selection Committee (Committee) met on March 1, 2012 to review the proposals submitted by the two (2) responding firms, Gideon Toal Management Services, LLC and International Airport Management, Inc. The Committee meeting continued on March 1, 2012 with oral presentations; however, ratings for both firms were delayed due to a Committee request to receive additional financial documentation from one of the firms. Ratings of the two firms occurred at the March 30, 2012, meeting and, at the conclusion; the sealed price envelopes for both firms were opened. Results for technical criteria and price for each proposer were as follows:

OVERALL ADJUSTED SCORE	PRICE (ANNUAL MANAGEMENT FEE)	PROPOSERS
4730	\$ 219,600	Gideon Toal Management Services, LLC
3805	\$ 614,875	International Airport Management, Inc

The Committee determined that negotiations were not necessary and recommended award of the Agreement to Gideon. With the County Mayor's authorization, the Department proceeded with preparation of the award documentation.

Accordingly, it is therefore recommended that the Board approve and award the subject Agreement to Gideon Toal Management Services, LLC.

PROJECT:	Club America Private Lounges
PROJECT LOCATION:	Miami International Airport
TERM OF CONTRACT:	Seven (7) years
OPTION(S) TO RENEW:	At the sole discretion of the Department, the terms of the Agreement may be extended for a maximum of three (3) one-year extensions.
CONTRACT MEASURES:	None
CONTRACT MEASURES ACHIEVED:	N/A
PAYMENTS FROM THE COUNTY:	\$219,600 annual management fee
COMPANY NAME:	Gideon Toal Management Services, LLC.

COMPANY PRINCIPAL(S):

Kimberly Wiemuth
Randall Gideon

**GENDER, ETHNICITY AND
OWNERSHIP BREAKDOWN:**

Gideon Toal Management Services, LLC.,
members are as follows:
Kimberly Wiemuth, 51%
Randall Gideon, 49%

LOCATION OF COMPANY:

500 W. 7th Street, Suite 550
Fort Worth, TX 76102

**PREVIOUS AGREEMENTS
WITH THE COUNTY IN LAST
FIVE (5) YEARS:**

None

INSPECTOR GENERAL:

Provisions for Inspector General and Independent
Private-Sector Inspector General were included
in the RFP

USER DEPARTMENT:

Miami-Dade Aviation Department




Jack Osterholt, Deputy Mayor

Memorandum



Date: September 18, 2012

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Supplemental Information Subsequent to Bid Protest Filed by International Airport Management, Inc., for the Operation of Club America Private Lounges at Miami International Airport, RFP No. MDAD-04-11

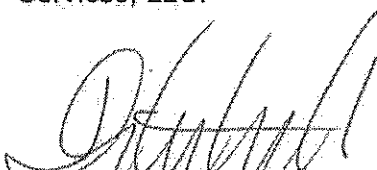
This supplemental information is being provided subsequent to the conclusion of the bid protest filed by International Airport Management, Inc. for the Operation of Club America Private Lounges at Miami International Airport, and the decision of the Hearing Examiner (attached) recorded pursuant to Section 2-8.4 of the Code of Miami-Dade County.

Background

The incumbent, International Airport Management, Inc. (IAM), filed the bid protest pursuant to my duly filed recommendation to award an agreement for the Operation of Club America Private Lounges at Miami International Airport to Gideon Toal Management Services, Inc. (Gideon).

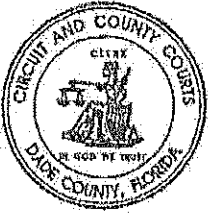
In its protest, IAM argued that (1) Gideon was not authorized to do business in the State of Florida at proposal submission; (2) Gideon did not submit the required performance bond in the name of the LLC.; (3) Gideon failed to disclose a 2009 federal lawsuit in California; (4) Gideon distributed its management fee to the Evaluation Committee members in a hand out prior to their scoring the proposals; and (5) Gideon proposed an incredulously low management fee.

Upon conclusion of a hearing held on August 6, 2012, before Hearing Examiner Loree Feiler, in which both IAM and the County presented evidence and testimony, the Hearing Examiner rejected IAM's arguments and upheld my original recommendation to award the contract to Gideon Toal Management Services, LLC.



Jack Osterholt, Deputy Mayor

Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Dade County, Florida



CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK METRO-DADE GOVERNMENT CENTER
SUITE 17-202
111 N.W. 1st Street
Miami, FL 33128-1933
Telephone: (305) 375-5126

August 23, 2012

David R. Hazouri, Esq.
Shubin & Bass
46 S.W. 1st Street, 3rd Floor
Miami, Florida 33130

Re: Bid Protest – RFP No. MDAD-04-11
(Nonexclusive Management Agreement for the Operation of Club America Private
Lounges at Miami International Airport (MIA))

Dear Mr. Hazouri:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the Honorable Judge Loree S. Feiler in connection with the foregoing bid protest hearing held on August 6, 2012.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,
HARVEY RUVIN, Clerk
Circuit and County Courts

By

Christopher Agrippa, Division Chief
Clerk of the Board Division

CA/fed
Attachment

Central Depository • Civil Division • Clerk of the Board • Code Enforcement • Comptroller / Auditor • County Recorder
Criminal Division • District Courts Division • Family Courts Division • Human Resources / Administrative Services • Juvenile Division
Marriage License • Parking Violations • Records / Archives Management • Technical Services Division • Traffic Division • V.A.B.

David R. Hazouri, Esq.
Shubin & Bass
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August 23, 2012

cc: Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)
Alina T. Hudak, Deputy Mayor/County Manager (via email)
R.A. Cuevas, Jr., County Attorney (via email)
Jenelle Snyder, County Attorney's Office (via email)
Hugo Benitez, Assistant County Attorney (via email)
David Murray, Assistant County Attorney (via email)
Eddie Gonzalez, Assistant County Attorney (via email)
Rosa Martin, Legal Assistant, County Attorney's Office (via email)
Charles Anderson, Commission Auditor (via email)
Elizabeth Owens, BCC Legislative Analyst, Commissioner Auditor's Office (via email)
Jose Abreu, Director, Miami-Dade Aviation Department (via email)
Jack Osterholt, Deputy Mayor (via email)
Marie Clark-Vincent, Division Director, Contracts Adm., Div., MIA (via email)
Lenora Allen-Johnson, Contract Office, MIA (via email)
Ray Diaz, MIA (via email)
Christopher Agrippa, Division Chief, Clerk of the Board Division (via email)
Joseph M. Goldstein JGoldstein@shutts.com
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Ali N. Ghraoui, International Airport Management, Inc. anghraoui@efubamerica.us
Kimberly Wiemuth, Gideon Total Management Services, LLC; kwiemuth@midecountal-ms.com

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

INTERNATIONAL AIRPORT
MANAGEMENT, INC.,

Petitioner,

RFP NO. MDAD-04-11

(Non-exclusive Management Agreement for
Operation of Club America Private Lounges at
MIA)

v.

MIAMI-DADE COUNTY; MIAMI-DADE
AVIATION DEPARTMENT,

Respondents,

and

GIDEON TOAL MANAGEMENT
SERVICES, LLC,

Intervenor.

CLERK OF THE BOARD
2012 AUG 23 PM 5:00
MIAMI-DADE COUNTY, FLA.
21

FINDINGS AND RECOMMENDATIONS OF HEARING EXAMINER

Pursuant to Section 2-8.4 Miami-Dade County Code and Implementing Order 3-21

Pursuant to Section 2-8.4 of the Code of Miami-Dade County and Implementing Order No. 3-21, this matter was heard before the undersigned Hearing Examiner on August 6, 2012, in Miami, Florida upon the bid protest filed by International Airport Management, Inc. ("IAMI").¹ Having considered the written protest, Miami-Dade County's written statement in opposition to the bid protest, affidavits proffered by the parties, and the exhibits; having heard arguments by the parties; having heard the live testimony of witnesses; and being otherwise fully advised, I find that the County did not act fraudulently, illegally, or dishonestly. I further find that the County's recommended award was not arbitrary and capricious, but rather based upon an honest exercise of discretion. Accordingly, I recommend denying the bid protest and affirming the

¹ Although the Code requires the bid protest hearing to be completed within 10 working days following the Hearing Examiner's appointment, the hearing was continued at the request of all parties. Similarly, all parties requested additional time (seven days) to provide proposed orders.

County Mayor's recommendation to award Gideon Toal Management Services, LLC ("GTMS") of the Non-exclusive Management Agreement for Operation of Club America Private Lounges at Miami International Airport ("MIA"). (Exhibit A).²

FINDINGS OF FACT

1. Miami-Dade County (the "County") issued a Request For Proposals number MDAD-04-11 for a Non-exclusive Management Agreement for Operation of Club America Private Lounges at MIA (the "RFP") (Exhibit B, hereinafter the RFP). The Lounges are private, independent, nonaligned airport facilities that offer passengers food, beverages, business and personal services. The County, through the Miami-Dade Aviation Department, was seeking a vendor to operate these lounges for a term of seven years with an option for three one-year extensions. RFP, § 1.1, at RFP-6.

2. Pursuant to the RFP, the County keeps all revenues generated by the club lounges. The vendor is paid a fixed fee – a management fee – which includes profit, overhead expenses, and both required and optional insurances. Nearly all other expenses are fronted by the vendor and reimbursed by the County, including payroll, consumables, furniture, janitorial, and others. These reimbursable expenses can go up or down depending on the approved County budget.

3. The RFP contained four minimum qualification requirements, including that the Successful Proposer be authorized to do business in the State of Florida. RFP, at RFP-9. Such proof was required to be submitted with the proposal, but the time for compliance is at the time for contract award. RFP, at Appendix E-2.

² References to Exhibit are to the Protester's Exhibits unless otherwise indicated.

4. GTMS submitted its proposal in the name of "Gideon Toal Management Services LLC". With its proposal, GTMS provided the County a copy of its certificate to transact business in Florida as a Texas based corporation using an "Inc." designation. Exhibit D, at 47 and at 184. In 2009, GTMS had converted from a corporation using an "Inc." to a limited liability company, using an "LLC" designation. GTMS Ex. No. 1 and testimony of Debbie Witherspoon, Chief Financial Officer of GTMS. The "LLC" is the successor entity to the converted "Inc." entity. As the one succeeded the other, they shared common FEIN and taxpayer ID numbers. Exhibit D, at 6, 22, 36, & 47. When it submitted its proposal, GTMS was conducting business in Florida, under contract to United Airlines to manage United's lounge at Fort Lauderdale International Airport. It was GTMS's understanding that it did not need to update its certificate of authority in Florida because all of the existing rights and obligations of the "Inc." entity were automatically transferred to the "LLC" entity. Within its proposal, while GTMS indicated that the proposer was the "LLC" it also included items, such as pre-conversion tax returns and the proposal bond guaranty that referred to the "Inc." entity which had been subsumed into the "LLC". See, e.g., Exhibit D, at 3 (noting that the proposer is "Gideon Toal Management Services, LLC. (GTMS)" in its Executive Summary).

5. After the submission of its proposal, but before oral presentations, the County asked GTMS to clarify the relationship between the "Inc." entity and the "LLC" entity, and also asked GTMS to provide a renewed proposal bond guaranty in the name of the "LLC" entity and to provide a certificate of authority to do business in the State of Florida in the name of the "LLC" entity. Exhibits I & K. GTMS complied with the County's requests for clarification. *Id.*; see also Testimony of Contracting Officer Lenora Allen-Johnson and of Debbie Witherspoon.

6. To be eligible for award the proposal and proposer had to be responsive and responsible. The RFP provide the following direction as to responsiveness:

Each Proposal will be preliminarily reviewed by County staff for a determination as to whether the Proposal is potentially not responsive. All decisions regarding whether a Proposal shall be deemed not responsive shall be made by the Office of the County Attorney. A responsiveness analysis includes whether a proposal is of timely submission, has the appropriate signatures as required on each document, does not materially alter the terms and conditions of the RFP, includes a completed Management Fee form, includes a proposal guarantee, clearly indicates an intent to be bound by the Proposer on the terms and conditions of the RFP, and can otherwise form the basis of a binding agreement. Except as noted previously in this section, where this RFP states that documents "must" or "shall" be provided, or "must" or "shall" be provided in a specific form, the failure to supply such documentation shall not render a proposal not responsive, unless the absence of those documents is such that the proposal is no longer a clear assent to be bound by the terms of the RFP. Where a proposal deviates from the provisions of the RFP, the County reserves for itself the discretion to accept such non conforming proposal, if the deviation is not material.

RFP, § 4.2, at RFP-32. The RFP expressly provided that omission of documents that "should or must" be submitted does not render a proposal non-responsive, unless that omission deprives the County of a clear assent of an intent to be bound by the terms of the contract. *Id.*

7. Due to the "LLC" and "Inc." issue regarding GTMS and an issue as to the protester International Airport Management, Inc. ("IAMI") relating to its compliance with the financial requirements of the RFP, the County's Contracting Officer, Ms. Allen-Johnson, sought a determination from the County Attorney's Office as to whether the proposers were responsive. Exhibit I. The County Attorney's Office determined that both proposers were responsive. GTMS Ex. 8.

8. Proposers were to describe any prior or pending litigation. RFP, at RFP-14 to RFP-15. In 2010, GTMS settled a lawsuit with an employee. Exhibit L and GTMS Exhibit 5.

While GTMS did not describe this lawsuit in its proposal, it did disclose it during oral presentations to the Selection Committee. Exhibit M; County Exhibit 17, at 27 and 65-66 (transcript of GTMS oral presentation). The Selection Committee had a full and fair opportunity to ask questions about such litigation and in fact did so.

9. The lounges to be operated under this contract are located in Concourses J and F at Miami International Airport. By Addendum No. 3, the County advised the proposers of the square footage for each of these lounges and the annual rental rate per square foot that should be used in their proposals; this rental rate is used for accounting and informational purposes by the County, and the County does not collect rent from the vendor—in fact, neither proposer was asked to “bid” a rental rate. RFP, Addendum No. 3, at 3, ¶ C.1. and at Exhibit A. In its proposal, GTMS used the square footage disclosed by the County. IAMI used a larger amount of square footage in its proposal, increasing the amount of gross revenue and rent purportedly to be earned by the County, although no rent is actually paid.

10. During oral presentations, it was discussed with IAMI that it had proposed to use more square footage than was set forth in the RFP. As a result, the Selection Committee asked IAMI to confirm that it would honor its management fee even if the County did not permit IAMI to operate the additional square footage. County Exhibit 17, at 56-70 (IAM I oral presentation transcript). The Selection Committee County similarly asked GTMS to confirm that its management fee would not change should the County ask GTMS to operate the additional square footage in the lounge in Concourse F that was proposed to be used by IAMI. Exhibit 17, at 73-76. The Selection Committee’s exchanges with both proposers as to the square footage did not change any of the proposals, but instead ensured an apples-to-apples comparison regarding the management fees.

11. The County was to award the contract to the Proposer whose proposal was deemed to be in the best interest of the County. RFP, § 4.8, at RFP-38. To determine which proposal provided the best value, the County subjectively ranked the proposers on technical criteria, including their experience, proposed services, proposed budget (inclusive of both the ability to operate cost-effectively and also to generate sales), and ability to maintain the Clubs. RFP, § 4.3, at RFP-33 to RFP-34. As compared to IAMI, GTMS has more and varied experience at multiple airports and described in better detail their cost-control procedures. Additionally, the County objectively ranked proposers based on their proposed management fees. RFP, § 4.4, at RFP-34 to RFP-35.

12. As to the subjective technical criteria, the Selection Committee ranked GTMS higher than IAMI by a score of 3,480 to 3,355, with four out of five evaluators favoring GTMS. As to the remaining award criteria, the objective price criterion, GTMS's management fee was \$219,600 per year versus \$614,875 per year for IAMI, earning GTMS 1,250 points versus 450 points for IAMI. Thus, the total score for GTMS was 4,730 and for IAMI was 3,805, making GTMS the best value, offering a superior technical proposal with a lower management fee. Exhibit 3 (score Selection Committee Score Sheets); County Exhibit 12 (Management Fee Proposals).

13. The RFP did not provide that proposers were to be objectively ranked according to proposed gross revenues to the County or on the basis of proposed NOI (Net Operating Income, i.e. gross revenues less expenses, rent, amortization, and fees) to the County; these numbers factored into the subjective evaluation of the proposed budget, which was but one factor in the subjective technical criteria. Moreover, while the management fee is a firm fixed

amount regardless of future events, the proposed budget's NOI and projected revenues are hypothetical, and IAMI's slightly higher gross revenue projection is not a guarantee.

14. The proposers were to submit their management fee in a separately sealed envelope. RFP, at RFP-18. GTMS complied with the procedural requirement. Testimony of Ms. Johnson and County Exhibit 12. Prior to oral presentations, the County advised proposers not to introduce new information, but it did not expressly prohibit proposers from discussing their management fees. GTMS Ex. 7, at 1.

15. During its oral presentation, GTMS provided a handout that identified its management fee. Exhibit Q. When GTMS was about to discuss the management fee, the Chairman of the Selection Committee Ray Diaz, stopped the discussion, and no mention of the management fee was made. While some or all of the Selection Committee members may have seen the management fee, although that is denied, there is no reason to believe that such a disclosure affected the Committee's scoring of the technical criteria of the proposals. There is no evidence which suggests that the scores are inconsistent with good faith evaluations by the Selection Committee. See Testimony of Ray Diaz and Affidavits of Selection Committee Members.

16. Furthermore, at the time of GTMS's presentation, none of the Selection Committee members had knowledge of the amount of IAMI's proposed management fee.

CONCLUSIONS OF LAW

17. In its written protest and during the hearing, IAMI raised several arguments against the County's recommendation. Namely, IAMI argued that (1) GTMS was not responsive because it was not authorized to transact business in Florida; (2) GTMS's proposal must be rejected because it disclosed its management fee during oral presentations; (3) GTMS' management fee is a sham; (4) IAMI provided a better return to the County and was otherwise

more qualified than Gideon; (5) GTMS improperly modified its proposal by changing the rent it was willing to pay the County; and (6) GTMS was not responsive because it failed to disclose past litigation in its proposal. For the reasons set forth below, none of these arguments provide a basis to reject the Mayor's recommendation for award.

Legal Standard

18. "[T]here is a strong public policy in favor of awarding contracts to the low bidder, and an equally strong public policy against disqualifying the low bidder for technical deficiencies which do not confer an economic advantage on one bidder over another." *Intercontinental Props., Inc. v. State Dep't of Health & Rehabilitative Servs.*, 606 So. 2d 380, 387 (Fla. 3d DCA 1992); *see also Robinson Electric v. Dade County*, 417 So. 2d 1032 (Fla. 3d DCA 1982) ("we hold that the purpose of competitive bidding is to secure the lowest responsible offer and that the County may waive minor irregularities in effectuating that purpose").

19. Moreover, neither Hearing Examiners nor Judges are empowered to second guess the judgment of government employees and elected officials as to the wisdom of a procurement decision. To the contrary, a bid award may only be overturned if the County's contracting decision is arbitrary and capricious, or is the product of dishonesty, fraud, illegality, oppression, or misconduct. *See Liberty County v. Baxter Asphalt & Concrete, Inc.*, 421 So. 2d 503, 507 (Fla. 1982). An agency's decision is arbitrary if it is not supported by facts or logic. *See Agrico Chemical Company v. State Department of Environmental Regulation*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). An agency's action is capricious if the agency takes the action without thought or reason or with irrationality. *Id.*; *see also Marriott Corp. v. Metropolitan Dade County*, 383 So. 2d 662 (Fla. 3d DCA 1980) (County procurement decision need only be reasonably based on facts tending to support the County's conclusion).

20. IAMI cannot prevail on this protest merely by showing that it is possible to construct a reasonable argument whereby IAMI would be considered more qualified. "[A] public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous or if reasonable persons may disagree" *Baxter Asphalt & Concrete, Inc.*, 421 So. 2d at 507 (Fla. 1982). Moreover, the County's discretion is at its maximum when a Request for Proposals is the procurement vehicle, as a Request for Proposals (RFP) allows the County to subjectively consider factors other than merely price when awarding a contract. See Miami-Dade County Administrative Order 3-38. An RFP is inherently flexible. See *System Development Corp. v. Dep't of Health & Rehabilitative Servs.*, 423 So. 2d 433, 434 (Fla. 1st DCA 1982) (contrasting "rigid" bid process with more fluid RFP process).

GTMS Was Authorized to Transact Business in Florida

21. GTMS's proposal was responsive to the RFP regarding its authority to transact business in the State of Florida. Following the conversion of GTMS Inc. into GTMS LLC in 2009, the existing certificate of authority to conduct business in Florida as to GTMS Inc. automatically passes to GTMS LLC without further action. See Fla. Stat. § 607.1114(a) ("A domestic corporation that has been converted into another business entity pursuant to this chapter is for all purposes the same entity that existed before the corporation). Florida law is consistent with Texas law where GTMS is incorporated. Tx. Stat. § 10.106(1) ("the converting entity continues to exist without interruption in the organizational form of the converted entity, . . .").

22. In any event, in light of the public documents available regarding the corporate conversion, regardless of the references to GTMS Inc. in the proposal, there is no uncertainty

that the actual proposer was GTMS LLC, no doubt as to that entity's intent to be bound under the RFP, and no doubt as to the liability of GTMS's lender under the letter of credit. *See, e.g., Harris Excavating*, B-284820, 2000 CPD ¶103, 2000 WL 760327, *3 (Comp. Gen. June 12, 2000) (finding that discrepancy between the bidder's and bid bond principal's names was a matter of form not rendering the bidder nonresponsive where available documentation established the identity of the bidder and bond principal as the same entity).

23. To the extent that GTMS had to obtain a new certificate of authority for GTMS LLC, then the County acted reasonably in permitting it to do so during the procurement process and prior to award. Even assuming that the RFP required authorization at the time proposals were submitted (and it is not clear that it does), any failure to comply with solicitation requirements can be waived, unless the waiver "deprives the municipality of its assurances that the contract will be entered into, performed, and guaranteed according to its specified requirements" or "is of such a nature that its waiver would affect competitive bidding by placing a bidder in a position of advantage over other bidders or otherwise altering the common standard of competition." *Robinson Electric*, 417 So. 2d at 1034. Here, a failure to achieve authorization does not preclude GTMS from entering into a binding contract. *See* Fla. Stat. § 608.502(5), Fla. Stat. (2010) ("failure to obtain certificate of authority...does not impair the validity of any of its contracts.").

24. Furthermore, allowing GMTS to update its authorization did not put IAMI at a competitive disadvantage; accordingly, any deviation is waivable. *See Robinson Electric*, 417 So. 2d at 1034 (submittal of letter of credit instead of bid bond was waivable where no competitive advantage was created); *Tropabest Foods Inc. v. Dep't of General Services*, 493 So. 2d 50 (Fla. 2d DCA 1986) (submittal of price for 3.5 gallon juice mix rather than 1 gallon mix

as required by solicitation is a permissible minor deviation where no effect on competition is shown).

Disclosure of GTMS's Management Fee Does Not Require Rejection Of Its Proposal

25. The disclosure of GTMS's management fee during its oral presentations does not render it ineligible for award. IAMI failed to establish that such disclosure affected the Selection Committee's evaluation or that IAMI was prejudiced or disadvantaged by such disclosure.

26. There is no express requirement against disclosure of the management fee after submittal of its sealed envelopes. Section 2.3(B)2 of the RFP requires proposers to submit their management fee in a sealed envelope with their proposals; that is, it speaks to what GTMS and other proposers must do to properly submit its initial paperwork. RFP, § 2.3(B)2, at RFP-18. The submittal deadline had long since passed when GTMS made its oral presentation, and GTMS submitted its management fee proposal in a sealed envelope in conformance with Section 2.3(B)2. The RFP does not expressly restrict discussions of the Management Fee after submittal, and certainly does not expressly say that discussion of such fees will render the proposal non-responsive.

27. Furthermore, disclosure of a bid prior to its official opening does not automatically disqualify that bidder unless a competitive advantage is created. See e.g. *Hale Bldg. Co., Inc.*, B-210848 (U.S. Comp. Gen 1983) ("In this case, the irregularity was Morris' failure to protect its bid price from being revealed prior to opening. We agree with the agency that this failure is similar to submitting an unsealed bid. Therefore, the error is inconsequential and should be waived unless there is evidence of competitive prejudice to the other bidders.").

28. Here, there is no allegation by IAMI that this disclosure deprives the County of assurances that the Gideon will perform the contract. Nor can IAMI credibly claim that the disclosure placed Gideon in an advantageous position, or that an alleged appearance of impropriety exists. Under Florida law, it is permissible for a selection committee to rank proposers even where pricing has been disclosed inconsistently with the requirements of the RFP. See *Gtech v. Dep't of Lottery*, 737 So. 2d 615 (Fla. 1st DCA 1999) (upholding a solicitation process which sent an evaluation back to a selection committee evaluation after a successful bid protest invalidated that same selection committee's initial review).

29. In *Gtech*, the Selection Committee undertook a second round of rankings, despite the fact that "by that time, committee members knew the amount of each proposal." *Id.* at 620. In *Gtech*, the losing proposer argued that since proposals were open, it could not be ensured of a fair shot, and that an entirely new selection process was required. The *Gtech* Court rejected the theory that the appearance of impropriety required re-solicitation, irrespective of the fact that there was no evidence of bias. Instead, bias was a question of fact. As there was no evidence that committee members were biased, the award could stand. *Id.* at 621.

30. Here, there is no evidence that any member of the Selection Committee was biased in favor of GTMS because it disclosed its management fee. Four of five of the Selection Committee members submitted sworn affidavits affirming that they did not consider, nor even remember seeing GTMS's management fee when ranking IAMI and GTMS. Similarly, Mr. Ray Diaz testified that the GTMS's proposed management fee did not influence his rankings. Nor is there any credible evidence which suggests that the rankings were made in or are the product of bad faith, or were otherwise arbitrarily skewed in GTMS's favor.

31. Furthermore, none of the Selection Committee members knew the amount of

IAMI's proposed management fee.³ Accordingly, there is no evidence that the Selection Committee members had any basis to know whether GTMS' management fee compared favorably or unfavorably to IAMI's proposed management fee.

32. Accordingly, Gideon's disclosure of its management fee—where it otherwise submitted its fee in a sealed envelope in accordance with the RFP, and where there is no evidence of any bias in its favor—does not require rejection of its proposal.

There is No Basis to Look Behind GTMS's Management Fee

33. IAMI asserts that GTMS's management fee is a sham and that it was arbitrary for the County to accept this allegedly unrealistically low fee, based in large part on an alleged insufficiency in covering the same employee health insurance that is included in IAMI's management fee. But, the RFP does not require proposers to provide health insurance at all; the only required insurances are General Liability, Workman's Compensation, and Automobile. *See* RFP, Agreement, § 15. The Agreement thus obligates proposers to build costs for medical insurance into their management fee *solely to the extent they choose to offer such insurance*.

34. The County is therefore not required to, nor in position to, evaluate the amount of insurance coverage (if at all) Gideon provides to its workforce. It is not arbitrary for the County to fail to probe a non-existent requirement nor is it the role of a Hearing Examiner to perform a forensic accounting analysis of whether or not GTMS can achieve a profit under its proposal.

³ Additionally, it would have been difficult, if not impossible, for Committee members to use IAMI's prior management fee as a benchmark. IAMI's prior fee was only approximately \$87,000; the remainder of the fee paid to IAMI under the prior contract was a variable bonus payment. GTMS's proposed fee of approximately \$219,000 does not include any bonus payments (which are available under the Agreement). An apples to apples comparison of the fees alone would reveal only that GTMS fixed fee is nearly \$120,000 higher than IAMI's prior fixed fee, but provides no basis for judging whether this increase is a good or bad deal for the County.

IAMI's Proposed Budget Does Not Require Overturning the Award Recommendation

35. IAMI argues that the Selection Committee should have selected IAMI, as it allegedly offered higher gross revenues and rent to the County, and had a more realistic proposal. The RFP, however, does not ask proposers to guarantee or lock-in returns to the County; proposers were not asked to provide a minimum annual guarantee. The sole number on which objective scoring occurred is the management fee. *See* IAMI Exhibit B at 4.4.

36. As one part of the subjective rankings, the RFP asked proposers to include a draft first year budget based on hypothetical future gross revenues; the actual budget would later be negotiated between the County and the successful vendor. *See* RFP, Agreement at § 4.01. The proposed budget was but one of the four technical criteria in Section 4.3 of the RFP upon which the proposers were scored. IAMI's argument, therefore, is that it should have been subjectively scored higher than GTMS.

37. It is not the role of a judge or a hearing examiner, however, to undertake its own subjective re-scoring of the proposers. That role has been expressly disclaimed. *See Scientific Games, Inc. v. Dittler Bros., Inc.*, 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991) ("The reviewing court need not second guess the members of the evaluation committee to determine whether reasonable persons might reach a contrary result.").

38. Instead, my role is merely to see if there is a non-arbitrary basis for upholding the County's decision. The evidence presented at the hearing demonstrates that such a basis exists here. GTMS operates more lounges in more airports than does IAMI. GTMS operates both under contract to individual airlines, and under contract to airports. GTMS explained its relationships with national food vendors, and its cost-control policies. GTMS proposed to use its own crews as cleaning staff, to ensure constant attention to cleanliness; IAMI outsourced this function. While IAMI clearly disagrees with the decision of the Selection Committee, there are

sufficient facts in the record which reasonably support the decision of Selection Committee and the recommended award to GTMS.⁴

39. Lastly, neither IAMI nor GTMS will pay rent to the County under this agreement, rendering IAMI's argument that it offered more rent (and must therefore be ranked higher) irrelevant.

GTMS Was Not Allowed To Modify Its Proposal

40. Gideon was not allowed to modify its proposal during oral presentations by being given an opportunity to "match" IAMI's proposed rent. Under the proposed Agreement in the RFP, rent is not paid; it's merely reflected in the accounting. The County asks that a fictional rent be tracked as an accounting function which allows the airport to ensure that the use of the space provides a return on investment in excess of what ground rent would be, and allows the airport to properly compare revenues generated at the clubs against revenues generated by proprietary airline clubs, which do pay rent to the County.

41. Addendum Three to the RFP set the rent per square foot for the Club locations at \$110.52 and required proposers to base their fictional rent and proposed budget on the use of approximately 15,000 square feet of club lounge space.

42. IAMI, however, deviated from the RFP requirements, and based its budget on 20,000 feet of club space. Consequently, GTMS was asked if it could operate that same 20,000 square feet without impacting its management fee. See IAMI Exhibit M. GTMS indicated it could. The Selection Committee similarly asked IAMI to confirm that it would honor its management fee even if the County did not permit IAMI to operate the additional square

⁴ IAMI also argues that GTMS failed to disclose a single instance of employment litigation in California. The evidence revealed at the hearing demonstrates that the litigation was disclosed and discussed during GTMS's presentation. Thus, the Selection Committee was aware of this fact when it ranked proposers. See Exhibit M. That the Selection Committee did not place the weight on it that IAMI feels it deserves is of no merit given the balance of facts in this record.

footage. County Exhibit 17, at 56-70 (IAMI oral presentation transcript).

43. GTMS did not modify its fictional rent amount during its presentation. Instead, as is evident from the Selection Committee transcripts and the testimony of Ray Diaz, the Selection Committee requested confirmation from both proposers, GTMS and IAMI, that they would honor their proposed fixed management fees whether operating in less club lounge space (15,000 square feet) or more club lounge space (20,000 square feet). GTMS was not asked to alter its proposal, but rather to lock it in. And in any event, to the extent that these questions were prompted by IAMI itself choosing to propose on different terms than specified in the RFP, IAMI cannot profit from its own deviation from the specifications.

44. In its protest IAMI raised an argument as to staffing that it did not address during the hearing. To the extent that IAMI has not abandoned this issue, IAMI's staffing argument does not require rejecting the contract award. IAMI argued that Gideon's proposal listed 43 potential employees, but that in its oral presentation raised this to 44 employees. Neither the RFP nor the subsequent agreement required a binding staffing plan. In fact, the RFP allows for negotiations, and the attached Agreement expressly contemplates that staffing can be adjusted at the discretion of the County. *See* RFP, Section 4.03 of the Agreement. IAMI's own documents show that its staffing has varied between 16 and 24 people even within the same year, and fluctuated within each fiscal year. *See* IAMI Exhibit T. In short, even if GTMS did add an employee during oral arguments, this is consistent with the express terms of the RFP, and consistent with IAMI's actual business practices. The alleged modifications IAMI complains of serve no basis to overturn the recommended contract award.

CONCLUSION

IAMI has not established any illegal conduct, or arbitrary or capricious decisions, on the part of the County. Any defects in the process, to the extent there were any, were non-material and were properly waived by the County. In the end, what IAMI is left with is a belief that it is the better proposer, and that a different and better committee would rank it accordingly. But, it is not my function to second guess the County's decision, even if reasonable people would disagree with the County's decision. Thus, I concur in the County Mayor's recommendation of award to GTMS.


Hearing Examiner Loree Schwartz Feiler



MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: September 18, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(A)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☒ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(A)(1)
9-18-12

RESOLUTION NO. _____

RESOLUTION AWARDING MANAGEMENT AGREEMENT
FOR THE OPERATION OF PRIVATE LOUNGES AT MIAMI
INTERNATIONAL AIRPORT TO GIDEON TOAL
MANAGEMENT SERVICES LLC FOR A TERM OF TEN
YEARS, INCLUSIVE OF OPTIONS TO RENEW, AND IN THE
MAXIMUM AMOUNT OF \$2,196,000 IN MANAGEMENT
FEES; AUTHORIZING THE COUNTY MAYOR OR
DESIGNEE TO EXERCISE SUCH AGREEMENT TO AND
ENFORCE ALL TERMS THEREOF, INCLUSIVE OF
EXTENSION PERIODS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the award of a Management Agreement ("Agreement") to Gideon Toal Management Services LLC for the operation of private lounges at Miami International Airport for a term of ten (10) years, inclusive of option years, and for a total management fee of \$2,196,000; and authorizes the County Mayor or designee to execute the Agreement, in substantially the form attached hereto, and to enforce all terms thereof, including any applicable extension periods.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	


The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of September, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



David M. Murray

**NON-EXCLUSIVE MANAGEMENT AGREEMENT FOR THE
OPERATION OF THE CLUB AMERICA PRIVATE LOUNGES AT
MIAMI INTERNATIONAL AIRPORT**

THIS NON-EXCLUSIVE MANAGEMENT AGREEMENT, made and entered into as of
the

_____ day of _____, 2012 by and

Between the County:

Miami-Dade County Florida, a political subdivision
of the State of Florida, acting by and through its
Board of County Commissioners, hereinafter called
the "County", which shall include its officials,
successors, legal representatives, and assigns.

And

Management:

Gideon Toal Management Services LLC a limited
liability company authorized to do business in the
State of Florida (Management or Management
Company) authorized to transact business in the State
of Florida; which term shall include its officers,
partners, employees, successors, legal representatives,
and assigns.

Description of the Project:

The County, as represented by the Miami-Dade
Aviation Department (MDAD), has engaged a
Management Company to manage, operate and
maintain Lounge Facilities in a first class manner.

The Lounges are private, independent, nonaligned airport
lounges which offer passengers a full complimentary bar
including premium brand liquor, sandwiches, cookies,
snacks, local phone service, flight monitors, flight
announcements, newspapers, magazines, fax, copier,
scanner and a business center with private work station
desks, power outlets, internet connections for laptops,
computers, wireless printers, free wireless internet access
and flat screen TVs. Where applicable lounges also
feature shower facilities equipped with towel warmers
and telephone access with local service.

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EXHIBITS:

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Exhibit B:	Accounting and Internal Control Procedures
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Exhibit K:	Executed Affidavits of Successful Proposer
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Exhibit M:	Resolution R-456-07 Trans Fat Affidavit
Exhibit N:	Letter of Credit

**NON-EXCLUSIVE MANAGEMENT AGREEMENT FOR THE
OPERATION OF THE CLUB AMERICA PRIVATE LOUNGES AT
MIAMI INTERNATIONAL AIRPORT**

THIS MANAGEMENT AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 2012, by and between Miami-Dade County, Florida (the "County"), a political subdivision of the State of Florida and Gideon Toal Management Services LLC a limited liability company authorized to do business in the State of Florida ("Management") authorized to transact business in the State of Florida.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the covenants herein contained, the parties hereto agree as follows:

WHEREAS, the County owns Miami International Airport (MIA), and operates the Airport through the Miami-Dade Aviation Department.

WHEREAS, the Department desire to engage a Management Company to operate, manage, and maintain Club America Private Lounges.

WHEREAS, a Request for Proposal, RFP No. MDAD-04-11 was issued by MDAD on September 16, 2011 and in response to the Request for Proposal, the County received proposals and an award has been made to Management.

NOW, THEREFORE, in consideration of the premises, agreement, and the mutual covenants herein contained, the parties agree as follows:

DEFINITIONS

- **AGREEMENT:** The Management Agreement and all attachments hereto and a part hereof entered into by the County and the Management, including all of its terms and conditions, attachments, exhibits, and amendments.
- **AMENDMENT:** A written modification to this Agreement executed by Management and the County covering changes, additions, or reductions in the terms and conditions of this Agreement.
- **ANNUAL OPERATING BUDGET:** The projections of Management as to monthly and annual totals for revenues and expenses for each major financial account and line item, each distinct group of revenue and expense centers, and individual operating facilities, equipment, and the proper distribution of overhead and Management compensation to individual facilities.
- **CODE:** The Code of Miami-Dade County, Florida.
- **COUNTY:** Miami-Dade County owns the Miami International Airport (MIA) and operates the Airport through the Miami-Dade Aviation Department.
- **DEPARTMENT:** Miami-Dade Aviation Department ("MDAD"), which is a department of Miami-Dade County and represented by and acting through its Director or his/her designee(s).
- **DIRECTOR:** The Director of the Miami-Dade Aviation Department or authorized representative(s) designated in writing with respect to a specific matter(s) concerning the Services.
- **EFFECTIVE DATE:** The date that appears in the first paragraph of the Management Agreement.
- **FISCAL YEAR:** The period of time which commences on October 1st of a particular year and concludes on September 30th, of the ensuing year.
- **LOUNGES:** The Club America Private Lounges at Miami International Airport ("Facilities") as referenced in Exhibit A.
- **MANAGEMENT or MANAGEMENT COMPANY:** An independent firm, company, joint venture, corporation, partnership, or individual approved to oversee the operations of the Club America Private Lounges.
- **MONTHLY MANAGEMENT FEE:** The fee paid to Management for operating, managing and maintaining the Facilities.
- **MONTHLY VARIABLE MANAGEMENT FEE:** The fee paid to Management as an incentive for superior performance as reference in Sub-Article 6.02.

- **NET OPERATING INCOME (NOI):** See definition in the last paragraph of 6.02.
- **PROJECT MANAGER:** The person designated by the Department to administer the terms and conditions of this Agreement documents on behalf of the County.
- **SERVICES:** Those services that Management shall perform in accordance with the terms and conditions of this Agreement as directed and authorized in writing by the County.

ARTIE 1
Term and Facilities

1.01 Term:

The County hereby engages Management and Management hereby agrees to manage, operate and maintain the Club America Private Lounges located at Miami International Airport (the "Airport" or "MIA"), as described in Sub-Article 1.04 and commencing _____, 2012, for a term of seven (7) years (the "Term").

1.02 Extensions:

This Agreement may be extended at the sole discretion of the Department for a maximum of three (3) one-year extensions, given no existing Events of Default, as defined under Sub-article 18.01. Each Extension shall be exercised by the Department providing notice of said extension to Management, no later than ninety (90) days prior to the expiration date of the Agreement or the applicable Extension Period. In the event the Department does not give notice, this Agreement shall terminate accordingly. Management may, within thirty (30) days following the receipt of notice from the Department reject any such extension by written notice to the Department and, if so rejected, this Agreement shall terminate at the end of the term, or upon the termination of any exercised extension thereof as appropriate. Failure of Management to respond to the Department within the thirty (30) day notice period shall automatically constitute acceptance of the extension.

1.03 Termination of the Extension Period:

At any time during any exercised extensions of the term of this Agreement, pursuant to Article 1.02 above, Management, upon ninety (90) days advance written notice to the County, and the County, upon thirty (30) days written notice to Management, may terminate this Agreement without stated cause or liability to the other party.

1.04 Facilities:

The Department hereby makes available to Management the Facilities referenced in Exhibit A.

The Facilities of the County to be operated by Management hereunder consist of, but are not limited to, two (2) Club America Private Lounges, office, storage area, and include the furniture, fixtures and equipment contained therein or subsequently acquired; title to which is and shall remain in the name of the County. No furniture, fixtures or equipment shall be removed from the Facilities without the prior written approval of the Department. The Department reserves

the unlimited right, without liability to Management, to alter, change, modify or delete portions of the Facilities listed on Exhibit A for purposes of refurbishment, modification, expansion, renovation, improvement or repair. The Department shall have the unlimited right to add new facilities or delete existing Facilities. Such additions or deletions shall be reflected herein by providing a revised Exhibit A to Management. Neither the addition nor the deletion of Facilities to be operated by Management hereunder shall change the method for calculating compensation due Management, pursuant to Article 6 hereof, unless a lesser compensation percentage fee pursuant to Article 6.02 is agreed to by the Department and Management, in writing, for any new facilities added hereunder. The Department has the right to require the upgrading of the existing furniture, fixtures, and equipment.

1.05 Proposal Incorporated:

Management acknowledges that it has submitted to the County a proposal ("Proposal") that was the basis for the award of this Agreement and upon which the County has relied. The Proposal of Management, where not inconsistent with the terms and conditions of this Agreement, is hereby incorporated into this Agreement by reference.

1.06 Contract Measures:

The designated goal for this project is as follows: There are no Airport Concession Disadvantaged Business Enterprises (ACDBE) Goals designated for this project.

ARTICLE 2
Scope of Services

2.01 Services:

Management shall manage, operate and maintain Club America Private Lounges in a first class manner 365 days a year.

A. General

Management, on a twenty-four (24) hour basis shall: (i) manage, operate and maintain the Lounges in a neat, clean, and first-class manner and condition; (ii) provide sufficient and trained personnel; (iii) one staff member per shift must have the ability to speak multiple languages; (iv) provide safe and secure Lounges for guests; (v) provide prompt, courteous and exceptional customer service; and (vi) operate in a cost effective and efficient manner. Management shall provide hospitality services as needed or desirable, minimize cost and control expenditures, as well as develop strategies to maximize sales and optimize net income (yield). Access to the Lounges may

be obtained by invitation from non-aligned airlines, independent lounge programs, or allowing "walk-in" airline passengers who prefer to pay a daily fee or annual membership fee set by the Department directly to the Lounge.

B. Manage

1. Marketing:

Management shall develop a marketing plan by airline and service type to be submitted along with the annual budget to support the projected revenues.

2. User Agreements:

Subject to the prior written approval of the Department, as to forms of any agreements to be used, classes of users and the schedule of fees and charges, Management shall issue memberships, permits, and enter into special arrangements such as but not limited to cooperative agreements for the use of certain of the Facilities. All such agreements and arrangements shall be subordinate to the terms of the Agreement and shall terminate or be assignable to others upon the termination of this Agreement.

The Department shall have further rights to utilize its own employees or engage another Company to provide said services in meeting rooms independent of the Agreement. If the Department engages another company to provide services in meeting rooms which are covered by the Agreement, the other company will indemnify Management or name Management as an additional insured. In such event, the revenue from such operation shall not be included as Gross Revenue under the Agreement.

3. Hurricane/Disaster Response:

Management may also be required or authorized by the Department, from time to time, to cater or provide services to special functions and events, which may not necessarily take place within the Facilities.

Services required may include Management to assist/participate in providing meeting rooms, food and beverage and personnel as warranted in the event of hurricane, or mass migration, natural or manmade disaster(s), preparedness, and or response. These costs would be included in operating expenses.

4. Food and Beverage Services:

Food preparation is not contemplated. Foods and snacks may be issued from a dispensing kitchen. Management shall submit a list of menu items for Department approval and shall comply with the requirements of the multiple agencies overseeing food safety in Florida. Note that pre-

packaged or other foods including catered foods derived from or containing trans fat shall not be sold or distributed at the designated Facilities (see Exhibit M). These include but are not limited to: the Department of Health, the Department of Agriculture and Consumer Services, and the Department of Business and Professional Regulation.

Management may submit proposed concepts supported with projected revenues, subject to MDAD Project Manager approval.

C. Operate

Monitor customer service program(s), and respond to customer/passenger complaints on a timely basis. Management will submit their customer service-training program within thirty (30) days of the Agreement Effective Date, for the Department's review and approval.

Management shall participate in MDAD customer service program(s) and airport-wide customer service program(s) implemented by the Department.

D. Maintain

Maintain or cause to maintain the Facilities pursuant to Department standards, as may be promulgated from time to time pursuant to Sub-Article 10.05. Coordinate and maintain general oversight of inventories of products and coordination of deliveries of goods. Provide a comprehensive system (either manual or computerized) subject to prior approval of the Department that will track facility repairs and monitor preventive maintenance for facilities. Facility repair information should include type of repair, time and labor expended to do the repair and cost of supplies used for the repair. Documentation should be retained for at least 3 years and provided to the Department upon request for review.

ARTICLE 3
Gross Revenue and Deposits

3.01 Gross Revenues:

All Gross Revenues generated from the operation of the Facilities under this Agreement shall accrue to the County. "Gross Revenues" shall mean all monies, paid or payable to Management for transactions made and for services rendered by Management in the operation of the Lounges or provision of additional services, excluding any payments to Management by the County pursuant to this Agreement, regardless of when or where the transactions are made or the services are rendered, whether paid or unpaid, whether on a cash or credit basis. Discounts and allowances pertaining to guest related service issues if approved in writing and as allowed by procedures accepted and approved by the Department, gratuities, credits and refunds, and reimbursement made to guests and patrons for actual advances and outlays made as an accommodation to said guests and patrons

shall be excluded from Gross Revenues. Cashier shortages and undercharges (monies payable and receivable), from the Facilities operated hereunder, shall be netted against cashier overages and overcharges (monies paid and received) not refunded, on a daily basis. At the end of each reporting week if the cashier shortages and undercharges exceed the overages and overcharges, the difference shall be included in Gross Revenues and shall be paid to the County by Management from its own funds.

3.02 Deposits of Gross Revenues:

Management shall deposit Gross Revenues in a revenue depository account, of and to the credit of the County, in such banks and other depositories as the Department shall designate, in the manner described in the attached Exhibit C. Daily Deposits of Gross Revenues shall be comprised of Daily Deposits and Other Deposits. Daily Deposits shall be composed of daily Gross Revenues received in cash, check or traveler's check, credit and debit card vouchers with direct credit to the County's depository account, less any gratuities charged on credit and debit cards and other Department approved media plus any payments due the County from Management from net cashier shortages and undercharges. Daily Deposits shall be made as soon as practical, but not later than the next banking day following receipt of any revenue transactions. Other Deposits shall be composed of: Gross Revenues received in the form of receivables, such as airline and military vouchers when same day or next day "electronic funds transfer" is not available; credit and debit card vouchers not under direct credit to the County's Revenue depository account; and other forms of receivables as shall be approved by the Department. Management shall remit to the County Gross Revenues, including other deposits as soon as possible, but in no event later than the next banking day following receipt by Management. Duplicate deposit slips for Daily Deposits, properly certified by a cashier or officer of the depository bank, shall be delivered to the Department as an attachment to the corresponding Exhibit D, Daily Sales Summary. Management shall provide the Department supporting documentation indicating the composition of the deposit and a validated deposit slip, and/or proof of wire transfer to the credit to the County's revenue depository account.

3.03 Daily Sales Summary:

Management shall prepare a Daily Sales Summary each day summarizing revenues received or accrued in each revenue classification, sales tax, total revenues, cash over and short, credit card and other receivables net of credit card commissions, net cash deposited and gratuities charged on credit cards generated during the previous day's operations, for each facility, plus other statistical data required by the Department. The Daily Sales Summary, as shown in the form of Exhibit D, shall reflect daily and cumulative totals for each revenue classification accumulated during the course of each seven-day period for each operating unit beginning each Sunday and ending each Saturday. Management shall deliver

each Daily Sales Summary, accompanied by a validated deposit slip, to the Department as soon as practical, but no later than 10:00 a.m. on the next banking day following execution of any revenue transaction.

3.04 Deposits and Receivables Procedures:

Revenue deposits and receivables shall be processed in accordance with standard hospitality industry accounting methodology and the normal procedures and controls contained in Management's procedures manuals, as approved by the Department which shall be subject to the required accounting and internal control procedures described in Exhibit B. Management shall provide a month end aged trial balance of accounts receivable by the first of each month for the prior month. Management shall be obligated to actively pursue collection of all accounts receivables and shall be and remain responsible for the amount of same until the Department shall approve a write-off of said receivables.

ARTICLE 4
Budgets and Reports

4.01 Annual Operating Budget:

With the exception of the first year, annually thereafter, but no later than December 1 of (or date to be determined by Department) each year of this Agreement or any exercised extensions, Management shall provide a recommended Annual Operating Budget for the twelve-month period beginning October 1 of the following year. The Annual Operating Budget including the accompanying percentages and ratios shall be used by the Department and Management as a means of controlling the revenues and expenses of Management and to measure Management's performance under this Agreement. The Annual Operating Budget shall contain all the materials and details required in the Preliminary Budget Estimate, pursuant to Article 4.01 above, updated to reflect the then-current conditions and circumstances. The Annual Operating Budget shall be presented in a monthly format, in total and by operating unit, with comparisons to the prior year and the current year budget and actual. The Annual Operating Budget and any subsequent amendments thereto, shall be subject to approval by the Department. Management, in making expenditures hereunder, shall not exceed the expenditure percentages and ratios that are approved annually for each line item of the approved Annual Operating Budget without the prior approval of an amendment to said Budget by the Department. Monthly, in conjunction with the Monthly Financial Statement required pursuant to Article 4.04, management shall report all deviations from the dollar amounts approved for each dollar line item in the Annual Operating Budget, so that the Department may amend such Budget. In the event that Management is required to make expenditures in excess of the amount included in a monthly increment of the approved Annual Operating Budget because of emergencies or operational necessity such expenditures must be approved by the Department, Management shall make such expenditures and shall promptly advise the Department of such

action and the Annual Operating Budget shall be amended to reflect same. Within 10 calendar days of the date of notice of award of this Agreement, Management shall submit to the Department for its consideration a proposed Annual Operating Budget for the first year of this Agreement. Approval of the Annual Operating budget shall not be construed as authority for Management to spend all monies budgeted. Approval of the Annual Operating Budget shall not deprive the County of the right to examine expenditures under this Agreement, including but not limited to expenditures previously approved or authorized in the Budget process, to determine compliance with the terms of this Agreement. The terms of this Agreement cannot be modified or altered by approval of any Annual Operating Budget, and, in the event of a conflict, the terms of this Agreement shall govern the payment obligations of the County.

4.02 Budget – Employee Expenses:

The Budget provided by Management to the Department shall include a twelve-month period beginning October 1 for the staffing of operations hereunder and reimbursable wage rates and fringe benefits of employees of Management ("Employee Expenses") including the following:

- (a) The total number of Reimbursable employees of Management under this Agreement;
- (b) A classification title and job description of each job to be performed by employees of Management hereunder, including a designation of which classifications are considered management and supervisory.
- (c) The number of employees who will be performing each job classification hereunder;
- (d) The wages or salary to be paid each employee hereunder according to job classification. Provide the pay range for each position using U.S. Department of Labor, Occupational Employment and Wages.
- (e) The fringe benefits for full time reimbursable employees are six (6) paid holidays, six (6) paid sick days, one (1) week vacation for employees which have worked greater than one year and two (2) week vacation for employees which have worked greater than two (2) years. Benefits must be used in the year earned and shall not be carried over to the following year.

This section shall be utilized solely to pay for personnel working as employees of Management. Management shall not bill or budget under this section for personnel costs associated with third party vendors under contract to Management. Third party vendors under contract shall be reported as contract service as set forth in Exhibit G.

4.03 Changes in Employee Expenses by Management:

Management shall not provide, change, alter or modify items (a) through (e) in Sub-article 4.02, without the prior written approval of the Department.

If any such change, alteration or modification results in an increase or decrease in Employee Expenses, then the Annual Operating Budget as defined in Article 4.01 and Reimbursable Operating Expenses, as defined in Article 5.01, shall be adjusted accordingly by the Department. Third party contracts for the provision of any of these benefits must be approved by the Department and be cancellable at all times by the Department.

4.04 Monthly Financial Statement:

As soon as practical, but no later than fifteen (15) days following the close of each monthly period, Management shall provide the Department with comparative Monthly Financial Statements which shall reflect, in detail, budgeted and actual revenue and expense balances and their variances for each individual and consolidated group of revenue and expense centers under the control of Management hereunder. These Monthly Financial Statements shall be accompanied by a narrative from management explaining the factors that impacted monthly performance, and explanations of all budget variances. The Department may require that these Monthly Financial Statements reflect costs and expenses absorbed directly or indirectly by the County, such as, but not limited to, utilities, amortization of investments and attributable debt service thereon, foregone rentals at a rate(s) established by the Department, and the like.

4.05 Monthly Inventory Report:

As soon as practical, but no later than five (5) business days following the close of each month, Management shall provide the Department with a Summary of Physical Inventories in the form shown in Exhibit E, which shall reflect the opening and closing of physical inventory values for each major category of merchandise, supplies and materials, as well as the net changes in balances. The Department, at its discretion and without notice, may elect to observe and/or participate in inventory taking procedures.

4.06 Annual Audit:

As soon as practical, but no later than December 1 of each year of this Agreement, Management shall provide the Department with financial statements for the operations of the Facilities under this Agreement reflecting full disclosure for the annual period ending September 30 of each year and any partial years, and the management letter resulting from a review of the operations, internal controls and other observations. Said financial statements shall be audited and the

management letter prepared by the external auditors of the Department or any other firm of qualified independent Certified Public Accountants designated by Department. Following their completion, the Department and Management shall be provided with copies of the audited financial statements and the management letter.

4.07 Other Reports:

The Department may require Management to provide other reports generated by Management in the normal course of operations, which may include, but are not necessarily limited to, the following:

- (a) Daily Revenue Comparison Reports
- (b) Marketing Reports
- (c) Maintenance Reports
- (d) Labor Performance Reports
- (e) Exception Reports
- (f) Competitive Pricing Analysis
- (g) Internet search engine comments and review
- (h) Other reports to be determined.

4.08 Related Party Purchases:

Management is required to provide full disclosure and to seek prior written approval from the Department for all transactions which involve a Related Parties in either a revenue transaction or the purchases of goods and services. "Related Parties" shall mean Management itself and any entity which has a direct or indirect ownership interest in Management, or in which Management has a direct or indirect ownership interest, or in which a parent company of Management has a direct or indirect ownership interest, and any creditors of such Related Parties.

As to expense transactions, Management shall provide the following information: dates of transactions, dollar values of transactions, invoice numbers, check numbers, a disclosure of any allowances, discounts or rebates applicable to such transaction(s), the bases for calculating the charge and a description of the relationship of Management with such parties.

As to revenue transactions, Management shall provide the following information: dates of transactions, description of transactions, dollar values of transactions (billing rates as well as cost calculations and support), invoice date and number, payment date and amount. All revenue and receivables transactions shall be processed in accordance with Article 3 Gross Revenues and Deposits to ensure billings, payments and deposits are made on a timely basis.

Allocations of either revenues or expenses which cannot be substantiated to the satisfaction of the Department, in its sole discretion are expressly prohibited. The County, directly or through its internal or external auditors, reserves the right to

inspect the original copies of all applicable documents supporting Related Party transactions, in the possession of Management (and Related Parties, where the relationship is based on ownership), and the methods used for allocating and distributing costs and credits.

ARTICLE 5

Cost Reimbursements

5.01 Reimbursable Operating Expenses:

Management shall cause all obligations arising from operation of the Facilities to be paid when due. To the extent that such costs are readily discernible as attributable to the operation of Management hereunder, the County shall reimburse Management for all direct costs of operation hereunder, including material costs, payroll and related expenses, variable and fixed controllable and uncontrollable expenses, utilities, audits, capital operating equipment, maintenance and such other operating expenses approved by the Department or described in the approved Annual Operating Budget. Such expenses, as further defined in Exhibit G hereto, shall be referred to as "Reimbursable Operating Expenses". Reimbursable Operating Expenses shall include Employee Expenses as defined in Article 4.02. The County shall not reimburse Management for any Employee Expenses in excess of the amounts set forth in the Annual Operating Budget, except as provided in Article 4.03. It is the intent of this Agreement and specifically this Article 5.01 and 5.02 below that Management shall be reimbursed for all reasonable and appropriate expenditures made pursuant to this Agreement not inconsistent with the terms contained herein.

5.02 Imprest Operating Account:

The County shall establish, in its name and to its credit, an Imprest Operating Account to be used exclusively for payment by Management by check of Reimbursable Operating Expenses, excluding those paid from other accounts or funds pursuant to this Agreement. Checks to be issued from this account should not be released to the vendor for payment until such time as the County has approved the expenditure.

The Imprest Operating Account shall be funded by the County in such amounts as the Department shall deem necessary to ensure that payments are made on a timely basis. The balance of the Imprest Operating Account may be increased or decreased by the Department, from time to time, based on experience. The Department shall designate authorized signatures for this Imprest Operating Account, including County, Department, and Management representatives as the Department shall deem appropriate and authorize, in writing, from time to time.

Bank statements and cancelled checks pertaining to the Imprest Operating Account shall be sent directly to the Department. Said documents shall be picked

up by Management from the Department for reconciliation and shall be returned within five working days thereafter. When applicable, Management should utilize electronic computer access to bank accounts and statements to facilitate the timely reconciliation of the monthly bank statement, in which case, the due date of the reconciliation will be adjusted accordingly.

5.03 Imprest Payroll Account:

Management shall establish, in its name and to its credit, an Imprest Payroll Account to be used exclusively for the payment of net payroll costs. The Department, upon the recommendation of Management, shall designate authorized signatures on this Imprest Payroll Account. Bank statements and cancelled checks pertaining to the Imprest Payroll Account shall be sent directly to the Department. Said documents shall be picked up by Management for reconciliation and shall be returned within five (5) business days thereafter.

Bank statements and cancelled checks pertaining to the Imprest Payroll Account shall be sent directly to the Department. Said documents shall be picked up by Management for reconciliation and shall be returned within five working days thereafter. When applicable, Management should utilize electronic computer access to bank accounts and statements to facilitate the timely reconciliation of the monthly bank statement, in which case, the due date of the reconciliation will be adjusted accordingly.

5.04 Imprest Checking Account:

The County shall establish and fund from the Imprest Operating Account, in its name and to its credit, an Imprest Checking Account to be used exclusively for the payment by check for purchases and expenses, which must be paid for on delivery. The balance of such Account shall be in such amount as is deemed adequate by the Department. The Department, upon the recommendation of Management, shall designate those persons authorized to sign checks against the Imprest Checking Account on behalf of Management. The Imprest Checking Account shall be treated from an accounting perspective in the same manner as the Imprest Operating Account.

The Imprest Checking Account shall also be used to pay expenses on approved construction projects.

5.05 Petty Cash Fund:

Management may establish an Imprest fund in an amount sufficient to fulfill its intended purpose, in its name and to its credit a Petty Cash Fund to be used for making petty cash disbursements which may be necessary from time to time.

5.06 Invoices for Reimbursable Operating Expenses:

Invoices for Reimbursable Operating Expenses, other than those subject to the reimbursement procedures contained in Article 5. herein, shall be recorded daily, or such other frequency as the Department may authorize. Information shall be recorded separately for each transaction and shall include vendor name, invoice number, invoice date, invoice amount, net of maximum available purchase discounts, invoice due date, and expense classification in accordance with the Chart of Accounts customarily used by Management and approved by the Department. As soon as practical, but no later than the next working day or such other frequency as the Department may authorize, the Check Register Report and supporting invoices, duly approved by Management, shall be hand delivered to the Department for preliminary review and approval. The Department reserves the right to solicit additional information pertaining to any invoices which appear to be unrelated to operations controlled by Management or otherwise deemed by the Department worthy of investigation. Except as otherwise specifically provided herein, Management shall not pay any invoices listed on a check register until same are preliminarily approved by the Department. In the event that Management has paid any invoices listed on a Check Register Report which are not previously approved for good cause by the Department on a Request for Replenishment as defined in Article 5 herein, Management shall pay the amount of such non-approved invoices into the Imprest Operating Account. If such payment is not made within ten days of the date such payments are disapproved, the Department shall either deduct such amount from the Monthly Management Fee or invoice Management for such costs and such failure to pay may be deemed by the Department to be a breach or default hereof.

Services obtained from outside vendors should be obtained through sealed bidding, of at least three cost proposals which provides the detailed service, cost per hour/unit, time for completion and a grand total for job. Quotes should include verification by Management of a true business location and license before approval. The Department must approve any contracted services by Management that will exceed \$1,000.00 prior to Management entering into a contract. Copies of all new and renewed contracts must be provided to the Department so expenditures against those contracts are verified. Also, copies of all quotes should be submitted to the Department in the initial replenishment package for our records.

5.07 Payment of Invoices:

Following preliminary approval by the Department, pursuant to Sub-Article 5.06 above, a check register, along with original supporting invoices, shall be processed by Management for payment in accordance with the normal procedures of Management. Payments shall be made by check drawn on the Imprest Operating Account, paying only approved invoices reflected on the preliminarily

approved check register. Management shall maintain separate paid invoices files for operations covered by this Agreement, and said paid invoices files, including supporting documents, such as, but not limited to, purchase orders, shipping and receiving slips and the like, shall be County property, held in fiduciary possession by Management. At the request of the Department, but no less often than quarterly, Management shall deliver to the Department all paid invoices files related to operations pursuant to this Agreement, not previously provided to the Department pursuant to other provisions hereof.

Services obtained from outside vendors should be obtained through sealed bidding, of at least three cost proposals which provides the detailed service, cost per hour/unit, time for completion and a grand total for job. Quotes should include verification by Management of a true business location and license before approval. The Department must approve any contracted services by Management that will exceed \$1,000.00 prior to Management entering into a contract. Copies of all new and renewed contracts must be provided to the Department so expenditures against those contracts are verified. Also, copies of all quotes should be submitted to the Department in the initial replenishment package.

5.08 Not Used

5.09 Payment of Payroll Expenses:

Each week, or such longer period as shall be agreed to by Management and the Department, Management shall transfer from the Imprest Operating Account to the Imprest Payroll Account an amount equal to reimbursable net payroll costs reflected on the payroll journal of Management for such period. Employee payroll checks shall be processed in accordance with the normal procedures and controls of Management, subject to required internal control procedures described in Exhibit B. The Department may, at any time, monitor and audit the paying of reimbursable employee. Payroll checks shall only be written against and be accounted for in the Imprest Payroll Account.

5.10 Account Replenishment:

The Imprest Operating, Imprest Payroll and Imprest Checking Accounts shall be maintained on an Imprest (i.e. an advance of County funds for County purposes) basis. Disbursements from the Imprest Checking Account shall be listed on Management letterhead indicating check number, date issued, payee, amount, and expense classification, with original copies of invoices, delivery slips and like documents attached. Management shall similarly prepare separate listings of reimbursable disbursements from the Petty Cash Fund, if so authorized, which shall be paid to Management by the County, upon approval by the Department, from the Imprest Operating Account. Replenishment of the Imprest Checking Account by the County shall be made when necessary by check or wire transfer

drawn on the Imprest Operating Account, with the respective disbursement listings supported by individual invoices.

5.11 Replenishment of Imprest Operating Account:

The Imprest Operating Account shall be replenished by the County, as needed, by check or wire transfer drawn on County banking resources, other than the accounts and funds established pursuant to this Agreement, deposited directly into said Imprest Operating Account. Such replenishment shall be based upon a Request for Imprest Operating Account Replenishment, in the form shown in Exhibit H hereto ("Request for Replenishment"), prepared by Management, covering Reimbursable Operating Expenses paid for the seven-day period beginning each Sunday and ending each Saturday.

The Department shall have the right to require the submittal of separate Requests for Replenishment for separate expense categories. Requests for Replenishment of preliminarily approved Reimbursable Operating Expenses reflected on check register shall be accompanied by the original copies of corresponding invoices. The County shall only replenish the Imprest Operating Account to Reimbursable Operating Expenses supported by invoices or as otherwise provided herein. Any monies paid by Management from the Imprest Operating Account which has not been authorized for replenishment as described herein shall be deposited to the Imprest Operating Account by Management or shall be subsequently deducted from the Monthly Management Fee by the Department until such time that such expenditure may be properly authorized. Management shall deliver copies of the Imprest Operating Account check register to the Department within three business days of their production in the ordinary course of operations of Management.

5.12 Requests for Replenishment – Payroll Related Costs:

In accordance with the pay period frequently approved pursuant to Article 5.09, Management shall prepare a separate Request for Replenishment for reimbursable net payroll costs, in an amount equal to the transfer of reimbursable net payroll costs for the corresponding payroll period from the Imprest Operating Account to the Imprest Payroll Account. Requests for Replenishment covering reimbursable net payroll costs shall be accompanied by the corresponding payroll journal or register as evidence of payment. Periodically, but not more frequently than weekly, Management shall prepare additional Requests for Replenishment from the Imprest Operating Account for the costs of employer paid payroll taxes and employee fringe benefits of Management. Said Requests for Replenishment shall be prepared in accordance with the frequency and timing of the actual expenditures for such employer paid payroll taxes and employee benefits. Such periodic Requests for Replenishment covering reimbursable employer paid payroll taxes and employee fringe benefits, shall be accompanied by photocopies of payroll tax deposits, payroll tax returns, and such other supporting documentation as may be requested by the Department under the circumstances.

Management shall not be reimbursed for employee severance pay, or for the cost of fringe benefits not earned or accrued or while an employee has worked for Management other than at the Facilities. Periodically, but no less often than quarterly, Management shall prepare a detailed reconciliation of actual payroll and payroll related costs and deliver same, along with copies of corresponding Requests for Replenishment, and Federal and State quarterly tax returns, to the Department as soon as practical, but no later than twenty days following the close of every calendar quarter.

5.13 Requests for Reimbursement-Uncollectible Credit Charges:

Each month, Management shall prepare a request for reimbursement for dishonored checks and uncollectible credit card charges, which shall be supported by photocopies of each check and credit card charge claimed (charge back), and a written explanation as to the reason for uncollectibility. Charge-backs which resulted from the failure of Management to apply prescribed procedural controls shall not be reimbursed. Management shall not record the financial effect, nor execute reimbursement for any charge-backs not authorized by the Department. Reimbursements for authorized charge-backs shall be made payable to Management, and shall be recorded appropriately in accounting records.

5.14 Special Requests for Reimbursement-Other Costs:

Certain Reimbursable Operating Expenses may be incurred by Management and not processed through Daily Invoice Reports or payroll and related expense records. Reimbursement of such costs shall be made by processing special requests for reimbursement, as necessary, accompanied by evidence of payment, supporting third party documents, supporting calculations, and any other information the Department may deem necessary. Management and the Department shall agree as to the types of expenses to be reimbursed using this procedure.

5.15 Special Requests for Payment-Management Compensation:

The Monthly Management Fee shall be billed through a special request for payment, accompanied by the following information:

- (a) Letter from Management, on its letterhead and signed by the General Manager, summarizing fee computations, computed in accordance with Article 6, hereof.
- (b) Monthly or Quarterly Financial Statements, as appropriate.
- (c) Monthly and year-to-date financial statement showing actual performance against the Annual Operating Budget-to-date and performance for the same period in the prior fiscal year.

- (d) Submit a narrative explaining variances and impacts to the operations over prior year.

The Department shall withhold payment of the Monthly Management Fee(s) until all the requirements of this Article 5 and are met, including compliance by Management with any payment due under the bonus compensation program as provided in sub-article 6.03.

The Management fee shall be deemed to include, and shall be full and complete payment of: (1) all profit for Managements' operations at the Lounges, (2) all costs associated with remote or home-office support of Management's operations at the Lounges, (3) all indirect administrative costs associated with Managements' operations at the Lounges, (4) insurance premiums to be carried by Management related to operations at the Lounge and its Related Facilities, including workers compensation and general liability insurance, health/life insurance (5) all costs associated with travel for Management personnel, (6) all mark-up on work contracted by Management, including contracts for goods and services (7) costs associated with parking fees, (8) costs associated with professional memberships or continuing education, (9) legal fees and costs, (10) the value of stock options provided to Management employees, if provided, (11) internal advertising, (12) accounting fees, (13) Salary and benefits of the General Manager, required pursuant to Article 7.01 hereof, such as, but not limited to, salary, fringe benefits, pension contributions, automotive allowances, insurance and payroll related taxes and continuing professional education programs, (14) bond costs associated with Section 13.01 of this agreement. As such costs are fully compensated by the Management Fee, none of the above costs may be deemed reimbursable expenses under this agreement.

Certificates of Insurance must be submitted in accordance with Article 15, Insurance.

5.16 Management Operations Procedures Manual:

Management must develop a Operations Procedures Manual within thirty (30) days from the effective date. The Procedures Manual will contain all of the specific information regarding the operation at MDAD including but not limited to hours of operation, staffing levels, rates, maintenance schedules, special circumstances, policies and procedures. The contents of the Procedures Manual shall be subject to MDAD approval. Management shall be responsible for operation in accordance with the Procedures Manual. The Procedures Manual may be amended at any time by the Department.

5.17 Non-Reimbursable Expenses:

Without limiting or modifying any other provision of this Agreement which may pertain to reimbursement of fees, Management shall not be reimbursed for its expenses as a corporation, partnership or individual, of the following and similar in nature, including but not limited to:

- (a) Any component of the Management Fee,
- (b) Management's overhead and cost allocations.
- (c) Management's legal and accounting fees;
- (d) Charitable and political contributions.
- (e) Employee Travel, including hotel and per diem expenses.
- (f) Entertainment, including entertainment for the purposes of business development or client retention.
- (g) Public relations, gifts, dues and memberships and entertainment.
- (h) Salary and benefits of the General Manager, required pursuant to Article 7.01 hereof, such as, but not limited to, salary, fringe benefits, pension contributions, automotive allowances, insurance and payroll related taxes and continuing professional education programs.
- (i) Any penalties, assessments or fines issued by any court or authorized government entity or agency.
- (j) Employee social functions.
- (k) Employee severance pay, and the cost of fringe benefits not earned or accrued during the time of the Agreement or while the employee has worked for Management other than at the Facilities.
- (l) Charge-backs which resulted from the failure to apply controls as described in Article 5, Cost Reimbursements.
- (m) Performance Bond.
- (n) Any other expenses which are for services which do not provide a direct benefit to the MDAD operations of the Lounges.
- (o) Insurance premiums including general liability, workers compensation, health/life Insurance, and auto insurance: Certificates of insurance must be submitted in accordance with Article 15, Insurance

5.18 Cash Losses:

All cash losses, except losses arising out of the criminal acts of employees of Management or third parties, shall be the responsibility of and reimbursed by Management. The exclusion of criminal act losses must be supported by copies of filed police reports.

5.19 Prompt Payment:

Management shall be fully responsible for making prompt and timely payment of all obligations arising out of this Agreement, so as to maximize the potential for available discounts and commissions. All discounts, allowances, premiums and commissions paid or received hereunder shall be to the credit and benefit of the County. Management shall pay from its own funds any penalty, fine or like assessment resulting from any late or delayed payment of an obligation hereunder; provided, Management has not been unduly delayed in making payment of such obligation by action or inaction of the County.

ARTICLE 6
Compensation to Management

6.01 Monthly Management Fee:

The County shall pay to Management as consideration for managing, operating and maintaining the Facilities and providing the services required herein, a Monthly Management Fee of \$18,300.00 which shall be submitted by Management, in accordance with Article 5.15 with the Monthly Financial Statement as referenced in Sub-Article 4.04. Payments for any partial months shall be prorated.

6.02 Variable Management Fee:

As additional consideration for managing, operating and maintaining the Facilities; providing the services required herein; and as an incentive for superior performance; the County shall pay to Management a monthly variable fee.

On the first year, the variable fee will be ½ of 1% of the monthly Net Operating Income to the County under this Agreement.

On the 2nd year and thereafter, the County shall pay to Management on a monthly basis, 3.0% of the amount by which the adjusted monthly Net Operating Income to the County from comparable (in size and quantity) operations under this Agreement exceeds the monthly Net Operating Income during the same month in the prior year.

Only revenues and expenses for Facilities which have been operating for a full year shall be included in the calculation of Net Operating Income for purposes of determining the incentive compensation to be paid hereunder. "Net Operating Income" shall be calculated as follows: Gross Revenues, plus Allowances and Rebates, less Reimbursable Operating Expenses, rent, amortization, sales taxes collected from customers and remitted to the State of Florida, the Monthly Management Fee pursuant to Article 6.01, and prepaid and other operating expenses paid directly by the Department.

6.03 Bonus:

Management shall receive as compensation 1½% of the amount by which the monthly NOI exceeds the prior year actual monthly NOI: paid whenever the current month's NOI exceeds 30%. This shall be included as part of the billing payable upon billing by Management, in accordance with Article 5.15.

ARTICLE 7

Personnel

7.01 General Manager:

Management shall hire and assign, at its sole cost and expense, a full-time General Manager ("General Manager") responsible for the competent performance and fulfillment of the duties and responsibilities of Management under this Agreement and to accept service of all notices provided for herein. The General Manager shall be qualified and experienced in private Lounge management and must have had at least four (4) years of recent comparable level experience in an urban environment, catering to the business traveler. The General Manager shall have no other duties or responsibilities other than pursuant to this Agreement and shall maintain no office other than within the Facilities. The General Manager shall be subject to approval by the Department, if different than the General Manager named in the Proposal. The Department shall have the right at its discretion to require Management to replace the General Manager without stated cause. Vacations and extended absences to be taken by the General Manager shall, at all times, be subject to the prior approval of both Management and the Department.

7.02 Personnel:

Subject to the Annual Operating Budget and such other approvals as the Department may, from time to time, require, Management shall recruit, screen and employ such full-time, part-time and consultant personnel as are required for Management to competently fulfill its obligations under the terms and conditions of this Agreement. The Department shall have the right to approve personnel to be employed in designated classifications, including specifically, but not limited to, the assistant general manager and finance manager. To prevent conflict of interest in decision-making due to factors of nepotism the Department does not

approve of the employment of relatives of other employees or of Management and Related Parties who may or may not be reimbursable hereunder. For the purpose of this policy "relative" shall mean a parent, foster parent, parent-in-law, child, spouse, brother, foster brother, sister, foster sister, grandparent, grandchild, son-in-law, brother-in-law, sister-in-law, or any other family member living in the same household.

7.03 Personnel Standards:

Management shall properly control its employees, who shall present a clean, neat, well-groomed and professional appearance at all times, and discharge their duties in a cooperative, courteous and efficient manner. Satisfactory maintenance of these requirements shall be the basis for the continued employment of all employees of Management hereunder. Management shall require all personnel, except non-public contact and managerial employees, to wear visibly on their person, at all times while on duty, a distinctive name tag identifying the individual by name, as an employee of Management and, if appropriate, displaying an employee number or title. Management shall require all its personnel, except non-public contact and managerial employees, to be properly uniformed. All uniforms are subject to the prior approval of the Department.

7.04 Employment Procedures Manual:

Management shall, within thirty (30) days following the Effective Date of this Agreement, submit a detailed Employment Procedures Manual covering such policy subjects as, but not necessarily limited to: compensation and its adjustment, hours, promotions, job titles, job descriptions, job assignment criteria, fringe benefits, discipline, including counseling, reprimands and discharge, layoffs, the adjustment of grievances and other matters dealing with terms and conditions of employment. The Employment Procedures Manual shall be subject to review and written approval by the Department, and may be subsequently amended as the Department, on behalf of the County, determines, in its sole discretion, in compliance with local, state, and federal law to be necessary or appropriate. Management shall comply with and shall not change any provision of the Employment Procedures Manual without the prior written approval of the Department which approval may be withheld for any or no reason. Management shall take employment actions, which may involve any of the matters described in the Employment Procedures Manual, as the Department may require. In the event new or additional Facilities are added pursuant to Article 1.04 hereof, the Department may require Management to prepare and maintain a separate Employment Procedures Manual applicable only to the employees in such new or additional Facilities.

7.05 Restricted Area Access – Identification Badges:

Management shall be responsible for requesting the Department to issue identification badges to all employees and other personnel under its control who require access to restricted areas on the Airport as a part of their regularly assigned duties, and shall return the identification badges of all personnel transferred or terminated from the employ of Management or Airport assignment and upon termination of this Agreement. Management shall promptly report to the Department the names of all persons who were employed by Management from whom they were unable to obtain the return of Department issued identification badges. In the event that an identification badge is not returned because of a failure by Management, Management shall pay, from its own funds, the Department's established charge for lost or stolen identification badges. The Department shall have the right to require Management to conduct background investigations, criminal history checks and to furnish certain data on such employees before the issuance of such identification badges, to include the fingerprinting of employee applicants for such badges.

7.06 AOA – Right to Search:

It is understood that the Department has a strong interest in maintaining good Airport security and intends to implement increased security measures for companies having access to the Air Operations Area ("AOA") of the Airport. Management agrees that its vehicles, cargo, goods and other personal property are subject to being searched when entering or leaving the AOA. Management further agrees, when required by the Department, that it shall not authorize any employee requiring regular access to the AOA as part of his/her regular duties, to enter the AOA unless and until such employee has executed a written consent to search form acceptable to the Department. Persons not executing such consent to search form shall not be employed by Management pursuant to this Agreement.

It is further agreed that the Department has the right to prohibit an individual, agent or employee of Management from entering the AOA, based upon facts which would lead a person of reasonable prudence to believe that such individual might be inclined to engage in theft, cargo tampering, aircraft sabotage, or other unlawful activities. Any person denied access to the AOA or whose prior authorization has been revoked or suspended on such grounds shall be entitled to a hearing before a designated management representative of the Department within a reasonable time. Prior to such hearing, the person denied access to the AOA shall be advised, in writing, of the reasons for such denial. Persons denied such access shall not be employed by Management hereunder.

Management acknowledges and understands that these provisions are for the protection of all users of the AOA and are intended to reduce the incidence of thefts, cargo tampering, aircraft sabotage and other unlawful activities.

7.07 AOA – Driver Training:

Before Management shall permit any employee to operate a motor vehicle on the AOA, Management shall require such employee to have a current, valid, appropriate Florida driver's license and to attend and successfully complete the AOA Driver Training Course conducted periodically by the Department. The privilege of a person to operate a motor vehicle on the AOA may be withdrawn by the Department because of violation of AOA driving rules or loss of Florida driver's license.

7.08 Federal Agencies Right to Consent:

Management understands and agrees that all persons entering and working in or around arriving international aircraft and facilities used by the various Federal Inspection Services agencies may be subject to the consent and approval of such agencies and any bonding requirements as may be imposed by such agencies. Persons not approved or consented to by the Federal Inspection Services agencies may not be employed by Management on the Airport. These expenses are reimbursable subject to prior Department Approval.

7.09 Employment Related Examinations:

The Department shall have the right to require Management to use properly validated and lawful tests and procedures as a pre-employment screening mechanism for all or designated classifications of employees to assist Management in determining the accuracy of employment applications and the integrity of employment applicants. The Department may likewise require the use of shopping services, undercover operatives and other investigatory techniques for determining the honesty of employees. In addition, the Department may require Management to have polygraph examinations administered in individual instances, fully in compliance with the requirements and limitations of Federal law.

7.10 Tips and Gratuities:

No employee of Management shall be permitted directly or indirectly to solicit tips or request any form of gratuity from anyone unless under a program approved by the Department which may include the method to be used for distribution of such tips or gratuities.

7.11 Relationship of Parties:

Officers, agents, and employees of Management shall not be deemed to be employees of the County for any purpose whatsoever.

7.12 Wage Rates:

All employees of Management shall be paid at rates not to exceed those established in the Annual Operating Budget approved by the Department.

7.13 Employee Relations Expenses:

Management shall not be reimbursed by the Department for any legal or other services with respect to employee relations matters applicable to employees of Management, unless prior written approval is granted by the Department.

7.14 Language Requirements:

Management shall ensure that all employees in regular contact with the public, as part of their regular duties, are able to understand and communicate in clearly understandable spoken English. English and Spanish must be spoken at least one employee at each of the Facilities, unless otherwise approved by the Department.

Management shall utilize such tests or procedures satisfactory to the Department to ensure compliance with this provision.

7.15 Time Clock:

Management shall provide a recording-type time clock for use by all hourly employees. Management shall require employees to clock in or out within a twenty-minute span at shift change time; not earlier than ten minutes before, or ten minutes after the specified time, unless some other procedure or time recording device is authorized in approved Procedures Manuals. The Department reserves the right to change or waive the time clock requirement for individuals or classes of employees, where the use of a time clock is not considered practical, cost effective or appropriate.

7.16 Other Agreements:

Management shall not, without the specific advance written approval of the Department, which approval may be withheld without stated cause, enter into any contract, agreement or arrangement of any kind, which would or could in any way serve to increase Reimbursable Operating Expenses for wages or fringe benefits, to modify or change the duties, work rules, working hours or responsibilities of reimbursable employees of Management hereunder or any other matter dealt within the Employment Procedures Manual pursuant to Article 7.04 hereof, or to delegate or assign to any other party the right to make decisions as to such matters.

7.17 Employment Eligibility Verification (E-Verify):

Management is required to enroll in the United States Citizenship and Immigration Services E-Verify system, and to utilize that system to verify the employment eligibility of all persons performing work for Management under this Agreement. Management shall incorporate this requirement into all of its subcontracts as well.

7.18 Alcohol and Drug Testing:

Management acknowledges that the County has the obligation to establish a drug free workplace, and to establish policies and programs to ensure Airport safety and security. Management acknowledges that the Department has the right to require users of the Airport, including but not limited to lessees, permittees, licensees, and management companies, to establish reasonable programs to further the achievement of the obligations described herein. Accordingly, Management shall establish programs for pre-employment alcohol and drug screening for all candidates for employment at the Airport and for the same or similar screening, based upon reasonable suspicion that an employee, while on duty at the Airport, may be under the influence of alcohol or drugs. Further, to the extent permitted by law, Management shall establish a program for the random alcohol and drug screening of all employees who are authorized, pursuant to this Agreement, to operate any type or kind of vehicle on the airfield operations area ("AOA"). Management shall make good faith efforts to negotiate amendments to any existing contract(s), which may serve as a bar to Management's implementation of its obligations hereunder. Notwithstanding the above, Management specifically acknowledges that the Department has the right and obligation to deny access to the AOA and to withdraw AOA driving privileges from any person whom it has a reasonable suspicion to believe is under the influence of alcohol or drugs.

7.19 Employee Training:

Management shall, on an ongoing basis, provide effective customer service training programs for all personnel having public contact.

7.20 Use of Public Facilities:

Management acknowledges and agrees that the County has provided certain facilities, such as, but not limited to, seating areas, holdrooms and restrooms in the Terminal Building, public parking and other conveniences for the use of the traveling public and has also provided special facilities solely for the use of the employees of Airport tenants and commercial users. Management shall not permit its employees to use the public areas provided by the County for use by the traveling public, except those employees normally required to be in contact with

the traveling public, those providing passenger services and those doing so as part of regular assigned duties.

7.21 Passenger Referrals:

Management shall not permit its employees to enter into any agreements, understanding, arrangements or contracts, whether written or oral, relative to the referral of passengers and other Airport users to hotels, restaurant, shops or services off the Airport. The acceptance by an employee of any form of compensation, whether in cash or in kind, from airport employees and business and the possession of referral cards for such business shall be *prima facie* evidence of a violation of this provision.

7.22 Employee Covenants Violations:

In the event Management violates the covenants in Sub-Articles 7.20 or Sub-Article 7.21 above for failure to properly control its employees or by permitting its employees to improperly use facilities provided by the County for the use and convenience of the traveling public, the Department shall have the right to (i) confiscate the employee's Airport identification, (ii) require Management to terminate from employment at the Airport those employees who have individually violated the covenants of Sub-Article 7.20 and/or Sub-Article 7.21, and (iii) take action pursuant to Article 18 thereof.

7.23 Other Business Activity:

Management and its employees shall conduct no other business activity within the Facilities of the Airport, except as specifically authorized herein.

ARTICLE 8

Duties and Obligations of Management

8.01 Standards of Operations:

The Department shall have the exclusive right to approve, establish and revise retail prices, and standards for the type and quality of service, maintenance of the Facilities and other matters pertaining to operations and procedures under this Agreement. Management shall periodically make recommendations concerning these matters to the Department; however, the decision of the Department shall be final.

8.02 Revision of Operating Programs:

The Department has implemented and is planning to implement a number of programs and improvements relating to services provided under management agreements, including, but not limited to, the development of wrap-up bond and

insurance programs, joint purchasing arrangements, new point-of-sale and back office computer systems integrated with other computer systems of the Department, joint marketing programs, centralized accounting services, centralized maintenance and custodial services programs, and other programs impacting operations and Reimbursable Operating Expenses. Management shall, when requested by the Department, cooperate fully with the Department and others in the development and implementation of such programs and improvements and all expenses borne by Management in connection herewith shall be either a Reimbursable Operating Expense, or a reimbursable capital cost or a direct or prepaid expense as provided herein. To the extent that such programs serve to modify the terms and conditions of this Agreement, such terms and conditions shall be administratively amended by the Department in the manner and subject to the same requirements as in Article 25.04.

8.03 Policy and Procedures Manuals:

Unless such already exist, in which case Management shall comply with their requirements, Management shall develop and submit to the Department for its review and approval such policy and procedures manuals, which when approved, shall become the property of the County, as are necessary and appropriate to govern the operation and maintenance of the Facilities and the provision of services hereunder. Such manuals, without limiting the scope thereof, shall cover at least the following:

- (a) Courtesy policies governing the treatment of customers and, service standards.
- (b) Marketing and sales policies
- (c) Employee Training Manuals
- (d) Accounting procedures
- (e) All manuals and procedures related to point of sale equipment and systems, including but not limited to, those related to cashiers, back office support, and integration with Management's corporate systems and procedures.
- (f) Credit card and check acceptance and denial procedures
- (g) Facilities maintenance and cleanliness programs
- (h) Customer Complaints

Once any policy and procedure manual required herein is approved by the Department, it shall not be modified or amended without the further approval of

the Department. The manuals required pursuant to this Article 8.03 and Article 7.04 shall be developed based on the operation of Management at the Airport pursuant to this Agreement.

8.04 Resolution No. 456-07 Prohibiting County and Public Health Trust Employees from Using Products Containing Trans Fats:

Management shall not sell or provide at the designated Premises under this Agreement any pre-packaged, prepared or other foods, including catered foods, derived from or containing trans-fats (see Exhibit M). Management shall, periodically review existing inventories and projected products, to assure that only trans-fat free products are being offered for public consumption.

8.05 Not Used

8.06 Commodities and Equipment:

Management shall provide and maintain a sufficient supply of expendable commodities and supplies and provide all furnishings, fixtures and equipment authorized in the Annual Operating Budget, or authorized in writing by the Department, with title to same being vested in the County upon delivery to the Airport or installation at the Facilities.

8.07 Employee Parking:

The Department shall provide decals for use of the Employee Parking Lot on the Airport for all authorized employees of Management, the normal cost of which shall be considered an expense for the calculation of Net Operating Income, pursuant to Article 6.02 hereof.

8.08 Injury or Damage:

In the event of any injury to any person or loss or damage to any property in the Facilities, Management shall immediately notify the Department and promptly furnish copies of relevant reports in connection therewith. Management shall indemnify and defend the County against any claims arising out of any injury or damage, in conformance with the provisions of this Agreement.

8.09 Not Used

8.10 Capital Inventories:

On or before the Effective Date of this Agreement, and thereafter as determined by the Department, but not less often than annually, and on or before termination of this Agreement, the Department and Management will cause an inventory to be taken listing all property with a cost or value in excess of \$1,000 and having a normal useful life in excess of one year, made available by the Department to

Management to be used in the operation of the Facilities or otherwise purchased with County funds for use hereunder. Such inventory shall include, but not be limited to, furniture, fixtures, equipment and vehicles. Management shall establish appropriate controls, subject to review and approval by the Department, to prevent pilferage, thefts, disappearances or other losses of property from inventory. Management, shall maintain a current and up-to-date capital inventory listing and promptly advise the Department, in writing of all additions to or deletion from the inventory. Following the completion of each inventory required herein, except that required prior to the effective date of this Agreement, Management shall pay to the County the net book value of any losses from inventory. Nothing contained herein shall be constructed to authorize Management to dispose of any capital property of the County without the prior written approval of the Department.

8.11 Complaints:

Management shall respond promptly and courteously to all complaints received and shall provide the Department with copies of all written complaints and Management's response thereto. Partial or full refunds, in response to complaints, shall only be made in accordance with Department approved policies and procedures.

8.12 Not Used

8.13 Right to Audit:

The Department and the auditors of the County (internal and external) shall have the right, without limitation, at anytime, to audit, check, inspect and review all operating procedures of Management hereunder and all books of account, records, financial reports, financial statements, operating statements, inventory records, copies of Federal income and State sales tax returns, work papers and supporting documents relating to operations of Management hereunder, and other pertinent information as may be determined to be needed or desirable by the Department.

8.14 Contracts/Agreements:

Any and all contracts or agreements to be entered into by Management solely to support operations, hereunder shall be approved in advance by the Department and shall contain a provision that any such contracts or agreements shall be assignable, upon notice from the Department, to the County or to another party as designated by the Department.

8.15 Purchasing:

Management shall solicit not less than three (3) bids or quotes for all purchases of goods and services (including insurance) in excess of \$1,000, used in the operation of the facilities hereunder, unless waived by the Department in its sole discretion, and shall

make such purchases from the vendor quoting/bidding the lowest amount, unless otherwise approved by the Department. The Department may require Management to submit scope of services for services and/or specifications for purchases for prior approval as well as all bids submitted directly to the Department. Management shall maintain all quote information on file and provide to the Department such documentation of such bids/quotes as the Department may require.

Services obtained from outside vendors should be obtained through sealed bidding, of at least three cost proposals which provides the detailed service, cost per hour/unit, time for completion and a grand total for job. Quotes should include verification by Management of a true business location and license before approval. The Department must approve any contracted services by Management that will exceed \$1,000.00 prior to Management entering into a contract. Copies of all new and renewed contracts must be provided to the Department so expenditures against those contracts are verified. Also, copies of all quotes should be submitted to the Department in the initial replenishment package for our records.

ARTICLE 9

Rights Reserved to the County

9.01 Rights Reserved to County:

All rights not specifically granted Management by this Agreement are reserved to the County.

9.02 Rights of County at Airport:

The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport. The County shall, in the exercise of such right, be free from any, and all liability to Management for business damages occasioned during the making of such repairs, alterations and additions except those occasioned by the sole active negligence of the County, its employees, or agents.

9.03 Rights to be Exercised by Department:

Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

9.04 Right to Regulate:

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate Management or its operations.

9.05 Other County Rights:

Management shall be liable for any physical damage caused to the Facilities by Management, its employees, agents, contractors, subcontractors, vendors, or suppliers. The liability shall encompass: (i) Management's repair of the Facilities, or if the Facilities cannot be repaired, payment to the County of the fair market value replacement cost of the Facilities; and (ii) any other such damages to the County or the Airport arising from the physical damage caused by Management. The County may also initiate an action for specific performance, injunctive relief, or any other cause(s) of action pursuant to applicable law.

9.06 Management Agreement Assignable:

This Club America Private Lounges Management Agreement and all contracts entered into by Management hereunder shall be assignable by the County to others as designated by the Department, upon the request of the Department. Upon such assignment, Management shall continue to perform in accordance with the existing terms and conditions.

ARTICLE 10
Maintenance by Management

10.01 Cleaning of Facilities:

Management shall maintain and keep the Facilities clean at all times. If the Facilities are not properly maintained and kept clean, in the opinion of the Department, Management will be so advised and shall take immediate corrective action.

10.02 Repair of Damage:

Management shall repair all damage to the Facilities caused by Management, its employees, agents, independent contractors or patrons. Unless such damage is due to the negligence or misconduct of Management or its employees, the cost of repairs shall be considered a Reimbursable Operating Expense. The Department may, at its option, choose to do the work with its own forces or by contract or to require Management to perform or contract the work, as per Sub-Article 10.06 below.

10.03 Garbage and Trash Disposal:

Management shall remove from the Facilities all garbage, trash and refuse of any nature whatsoever which might accumulate and arise from any operations hereunder. Such garbage, trash refuse shall be stored and disposed of only in the manner approved by the Department.

10.04 Maintenance of Utilities:

Management or an authorized representative of management shall operate and maintain all the components of the electrical distribution, air conditioning, ventilating, fire protection, hot and cold water, and industrial and sanitary sewerage systems and facilities within the boundaries of the Facilities, unless otherwise directed by the Department. The Department reserves the right to make arrangements for emergency maintenance and repair of said systems and facilities, using its own or contract employees, during nights, weekends and holidays, the costs of which shall be considered operating expenses paid directly, pursuant to Article 6.02 hereof.

10.05 Maintenance and Repair:

Management shall maintain and repair the interior of the Facilities, and shall make all repairs as required in and about the Facilities, including, but not limited to, painting, doors, windows, fixtures, furnishings, appurtenances, replacement of light bulbs, ballasts and tubes and the replacement of all broken glass, which repairs shall be in quality and class equal to or better than the original work to preserve the same in good order and condition, subject to ordinary wear and tear.

10.06 Extraordinary Maintenance:

Management shall consult with the Department before undertaking any maintenance work which can be reasonably be expected to cost more than \$1,000. The Department may, at its option, choose to have the work done by its own forces or by contract or to require Management to perform or contract the work in accordance with Sub-Article 8.15, Purchasing.

10.07 Alterations and Signs:

Management shall not alter the Facilities in any way whatsoever, erect any signs nor permit any advertising of any nature without prior written approval from the Department.

ARTICLE 11

Design and Construction of Facilities

11.01 Design and Construction-General:

As authorized pursuant to Section 125.012(24), Florida Statutes, when requested by the Department, Management shall contract for the design and construction of refurbishments, renovations and additions to the Facilities and other facilities designated by the Department which may not be included in "Facilities" hereunder. Management shall at all times follow procedures and requirement

established by the Department for design, construction and reimbursement. All design and construction expenses shall be only as provided in a capital improvements budget to be established in accordance with the budget procedures of the Department.

11.02 Design:

Management shall select and contract with architectural, engineering and interior design firms, subject to the approval of the Department. Design services shall include, unless otherwise authorized by the Department, conceptual planning, artists renderings, plans and specifications and bid documents for equipment, furnishings, construction and demolition. Title to all design plans, logos and themes developed hereunder shall vest in the County and the County shall have the right to use same in such manner as it deems appropriate.

11.03 Award of Construction Contracts:

Management shall, following approval by the Department and Management of plans and specifications and bid documents, obtain competitive price quotations (bids) from qualified general contractors for construction of the improvements called for by approved plans and specifications and bid documents ("Improvements"). The construction contracts for the Improvements let by Management shall be subject to prior approval by the Department before they are executed by Management. If the bid of the lowest responsible bidder for any work is excessive, in the opinion of the Department, all bids shall be rejected, and new bids with modifications to the plans and specifications, if necessary, will be requested as determined by the Department. Any rebidding shall also comply with the provisions of this Article 11.03.

11.04 Certain Construction Contract Terms:

All contracts entered into by Management for the construction of the Improvements shall require completion of the Improvements within a specified time period following the award of the bid and shall contain reasonable and lawful provisions for the payment of actual or liquidated damages and the retention of up to ten percent of construction costs until completion of the contracted work. Management agrees that it will use its best efforts to take all necessary action available under such construction contracts to enforce the timely completion of the work covered thereby.

11.05 Improvements Free and Clear:

The Improvements, upon completion, shall immediately become the property of the County, free and clear of any liens or encumbrances whatsoever. Management agrees that any contract for construction, alteration or repairing of

Facilities, or for the purchase of material to be used, or for work and labor to be performed, shall be in writing and shall contain provision to protect the County from the claims of any laborers, subcontractors or material men against the Facilities or Improvements.

11.06 Right to Audit:

The County, through its auditors, internal, external or special, shall have the right to audit the costs of construction of the Improvements, which shall include any Department-approved changes.

11.07 Imprest Capital Outlay Account:

At the sole discretion of the County, it may establish, in its name and to its credit, an Imprest Capital Outlay Account to be used exclusively for payment by Management by check of the costs related to the design and construction of Improvements and the acquisition of equipment, pursuant to this Article 11, such payments to be processed in accordance with the procedures described in Exhibit F hereto. The Imprest Capital Outlay Account shall be funded by the County in such amount as shall be necessary to pay the costs of design and construction of Improvements when due. The Department shall designate authorized signatures for the Imprest Capital Outlay Account, including such County, Department, and Management representatives as the Department shall deem appropriate and authorize, in writing, from time to time. Bank statements and cancelled checks pertaining to the Imprest Capital Outlay Account shall be sent directly to the Department, with a microfilm copy of the said documents to be sent by the bank to Management. Costs of design and construction shall be paid by the Department as provided herein, but shall not constitute a Reimbursable Operating Expense as defined in this Agreement. The cost of non-fixed capital operating equipment acquired as a part of the construction of any Improvements shall be paid as provided in this Article 11.07.

11.08 Contracts Assignable:

All design and construction contracts entered into by Management shall be assignable by Management to the County or others as designated by the Department, upon the request of the Department. Upon such assignment, Management shall be relieved from any further responsibility to the County under such design and construction contracts.

ARTICLE 12
No Assignment, Subletting or Sale of Controlling Interest

12.01 No Assignment:

Management shall neither assign, transfer, pledge or otherwise encumber this Agreement, nor allow others to use the Facilities, without the prior written consent of the Department.

12.02 Ownership Structure of Management:

Management shall take no actions which shall serve to transfer or sell majority ownership, or change the management or control of the business entity of Management without the prior written consent of the Department.

12.03 Change of Control:

If Management is a corporation, the issuance or sale, transfer or other disposition of a sufficient number of shares of stock in Management which results in a change of control Management, shall be deemed an assignment of this Agreement for purposes of this Article 12. If Management is a partnership, transfer of any interest in the partnership, which results in a change in control of Management, shall be deemed an assignment of this Agreement for purposes of this Article 12.

12.04 Authority:

If Management signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Agreement on behalf Management does hereby covenant and warrant that (i) Management is a duly authorized and existing entity, (ii) Management has and is duly qualified to do business in State of Florida, (iii) Management has full right and authority to enter into this Agreement, and (iv) each and all of the persons signing on behalf of Management are authorized to do so. Upon the Department's request, Management shall provide the Department evidence reasonably satisfactory to the Department confirming the foregoing representations and warranties.

12.05 Franchising:

The Facilities may not be branded nor franchised without the specific prior written approval of the Department, which approval may be withheld or denied without stated cause. Before such approval can be considered, the terms, conditions and fees of any franchise agreement shall be subject to advance review and written approval of the Department.

ARTICLE 13

Bonds

13.01 Performance Bond:

Within twenty (20) calendar days of the Effective Date of this Agreement, Management shall provide the County with a performance bond which shall be kept in full force and effect during the terms and conditions of this Agreement and, thereafter, until all financial obligations, reports or other requirements of the Agreement thereunder are satisfied, a surety bond or an irrevocable letter of credit, or other form of security acceptable to the Department and so endorsed as to be readily negotiable by the County for the payments required hereunder, in an amount equal to One Hundred Thousand Dollars (\$100,000.00), plus any state sales taxes as may be applicable and required by law. Such performance bond shall be kept in full force throughout the term of this Agreement and any Extension Periods. The Department, without prior notice to Management, may draw upon such performance bond, given's failure to perform or breach of this Agreement. The Department may require the Management to increase or decrease the amount of the performance bond during the term of this Agreement or any Extension Periods.

13.02 Not Used

13.03 Surety Bonds:

- (a) All bonds shall be written through surety insurers authorized to do business in the State of Florida, with the following qualifications as to management and financial strength according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey:

<u>Bond Amount</u>	<u>Best Rating</u>
500,001 to 1,500,000	B- V
1,500,001 to 2,500,000	A-VI
2,500,001 to 5,000,000	A-VII
5,000,000 to 10,000,000	A-VIII
Over 10,000,000	A-IX

- (b) On contract amounts of \$500,000 or less, the bond provisions of Section 287.0935, Florida Statutes shall be in effect and surety companies not otherwise qualifying with this paragraph may optionally qualify by:
1. Providing evidence that the surety has twice (2x) the minimum surplus and capital required by the Florida Insurance Code at the time the solicitation is issued.

2. Certifying that the surety is otherwise in compliance with the Florida Insurance Code.
3. Providing a copy of the currently valid Certificate of Authority issued by the United States Department of the Treasury ("Treasury") under 31 U.S.C. §§ 9304-9308.

Surety insurers shall be listed in the latest Circular 570 of the Treasury entitled "Surety Companies Acceptable on Federal Bonds". The bond amount shall not exceed the underwriting limitations as shown in this circular.

- (c) For contracts in excess of \$500,000, the provisions of this Sub-Article must be adhered to, plus the company must have listed for at least three (3) consecutive years, or holding a valid Certificate of Authority of at least \$1.5 million dollars on a Treasury list.
- (d) Surety bonds guaranteed through the Small Business Administration or Contractors Training and Development Inc., will also be acceptable.
- (e) The attorney-in fact or other officer who signs a contract company must file with such bond a certified copy of his power of attorney authorizing him to do so. The contract bond must be counter signed by the surety's resident Florida agent.

The required bonds shall be written by or through and shall be countersigned by, a licensed Florida agent of the surety insurer, pursuant to Section 624.425, Florida Statutes.

The bonds shall be delivered to the Department upon execution of the contract between the Management and the County.

13.04 Cancellation of Bonds:

Cancellation of any bonds, or non-payment of any premiums for any bonds required by this Agreement shall constitute a breach of this Agreement.

ARTICLE 14 Indemnification

Management shall indemnify, defend, and hold harmless the County, including its successors and assigns, and its officers, employees, consultants, sub-consultants, agents, bond trustees, and instrumentalities (collectively the "Indemnitees"), from any and all liability, loss, claim, damage or cost, including attorney's and expert fees and cost of defense, which the County or its officers, employees, consultants, sub-consultants, agents, bond trustees, or instrumentalities may incur in whole or in part (i) out of any injury, loss, theft, damage or cost to any person or property while on or about the Facilities, or out of any condition on the Facilities, or out of

any breach of any Agreement covenant, warranty or representation by Management or persons acting under Management or from any act or omission anywhere by Management or persons acting under Management, or (ii) as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Management or its employees, agents, servants, partners, principals, contractors, vendors or suppliers, except to the extent caused directly by the negligent act or willful misconduct of County. Management shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's and expert's fees which may be issued thereon. This provision shall survive termination of this Agreement.

ARTICLE 15

Insurance

15.01 Insurance Required:

Within twenty (20) calendar days of the Effective Date of this Agreement, Management shall obtain all insurance required under this Article and submit it for approval to:

Miami-Dade Aviation Department
c/o Risk Management
P.O. Box 025504
Miami, Florida 33102-5504.

All insurance shall be maintained throughout the term of the Agreement and any Extensions thereof;

The limits for each type of insurance may be revised upon MDAD Risk Management's review and approval of the Management's operations. Additional types of insurance coverage or increased limits may be required if, upon review of the operations, the Department determines that such coverage is necessary or desirable. Also note: The Department will not accept self-insurance and all policies must be separate policies insuring the Facilities at Miami International Airport alone.

Certificate(s) of insurance from Management must show coverage has been obtained that meets the requirements as outlined below during the provision of Services at the Facilities:

- A. Workers' Compensation as required by Chapter 440, Florida Statutes.
- B. Commercial General Liability Insurance on a comprehensive basis including Contractual Liability, Board Form Property Damage and

Products and Completed Operations in an amount not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage combined. This policy shall include Miami-Dade County as an additional insured with respect to this coverage.

The Commercial General Liability Insurance coverage shall include those classifications, as listed in Standard Liability Insurance Manuals, which are applicable to the operations of the Concessionaire in the performances of this Agreement.

- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with this agreement in an amount not less than \$500,000* per occurrence for bodily injury and property damage combined.

*Under no circumstances is Management allowed on the Airside Operation Area (AOA) without increasing automobile coverage to \$5,000,000 as approved by the Risk Management Office.

15.02 Certificates of Insurance:

Management shall furnish certificates of insurance to the County prior to commencing any operations under this Agreement, which certificates shall clearly indicate:

- a) the Management has obtained insurance in the type, amount and classifications as required for strict compliance with this Sub-Article;
- b) the County is named as an additional insured; and
- c) no material change or cancellation of said insurance shall be effective without thirty (30) days prior written notice to the County. The County reserves the right to require Management to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to Management.

15.03 Certificates of Renewal:

Management shall furnish certificates evidencing renewal or replacement of required insurance coverage, thirty (30) days prior to expiration or cancellation. The Department reserves the right to reasonably amend the insurance requirements or to assume direct responsibility for carrying all or any of the required insurance coverage by the issuance of notice in writing to Management. In the event the Department exercises its right to assume direct responsibility for any of the required insurance coverage, Management shall be named as an additional insured, where applicable provided the Department does not self-insure. Compliance with the foregoing requirements shall not relieve

Management of its liability and obligation under any other portion of this Agreement.

15.04 Certificates of Continuity:

Management shall be responsible for assuring that the insurance certificates required in conjunction with Article 15, "Insurance" remain in force for the duration of the Agreement, including any and all Extensions, if applicable. If insurance certificates are scheduled to expire during the Agreement period, Management, shall be responsible for submitting new or renewed insurance certificates to the MDAD Risk Management Office at a minimum of thirty (30) calendar days before such expiration.

15.05 Insurance Company Rating Requirements

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A-" as to financial strength, and no less than "Class VII" as to financial size, according to the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the MDAD's Risk Management Office.

Certificates will show that no modification or change in insurance shall be made without thirty (30) calendar days written advance notice to the certificate holder.

15.06 Cancellation of Insurance:

Cancellation of any insurance or non-payment of any premiums for any insurance policies required by this Agreement shall constitute a breach of this Agreement.

15.07 Other Insurance Indemnification:

Management represents and warrants that any insurance protection required by this Agreement or otherwise provided by its contractors and subcontractors shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, consultants, agents and instrumentalities as herein provided.

15.08 Management Liable:

Compliance with the requirements of this Article 15 "Insurance" shall not relieve Management from its liability under any other portion of this Agreement.

15.09 Right to Examine:

The Department reserves the right, and upon reasonable notice, to examine the original policies of insurance (including, but not limited to binders, amendments, exclusions, riders and applications) to determine the true extent of coverage. Management agrees to permit such inspection at the offices of the Department. In addition, upon request (but no later than five (5) days from the date of request, unless such longer period is agreed to by the Department) Management agrees to provide copies to the Department, at Management's sole cost and expense.

15.10 Personal Property:

Any personal property of Management, or of others, placed in the Facilities shall be at the sole risk of Management or the owners thereof, and the Management shall not be liable for any loss or damage thereto, irrespective of the cause of such loss or damage.

15.11 Survival of Provisions:

The provisions of this Article 15, "Insurance" shall survive the expiration or earlier termination of this Agreement.

ARTICLE 16

Trademarks and Licenses

The County may, from time to time, permit Management to utilize certain patents, copyrights, trademarks, trade names, logos, computer software and other intellectual property owned by the County in the Performance of this Agreement, which patents, copyrights, trademarks, trade names, logs computer software and intellectual property may have been created pursuant to the terms of this Agreement. Such permission, when granted, shall be evidenced by a nonexclusive license executed by Management and the Department, on behalf of the County, granting Management the right, license and privilege to use a specific patent, copyright, trademark, trade name, logo, computer software or other intellectual property without requiring payment of fees therefore. The County may likewise license from Management the use of certain trademarks which Management has previously created, without a requirement for the payment of any additional fees or compensation to Management for such license. Failure of the parties to execute a formal license agreement shall not vest neither title nor interest in such patent, copyright, trademark, trade name, logo, computer software or intellectual property shall vest in the using party.

ARTICLE 17
Force Majeure

Strictly in relation to the obligations of each party to the other under this Agreement and not for any other purpose or for any benefit of a third party, each party shall be excused from the timely performance of their respective obligations or undertakings provided in this Agreement, if the performance of such obligations or undertakings is prevented or delayed, retarded or hindered by: (i) strikes, lockouts, boycotts, actions of labor unions, labor disputes, labor disruptions, acts of God, work stoppages or slowdowns, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, provided however, this clause (i) does not apply to such actions related to employees, temporaries, contractors, subcontractors or suppliers of Management; or (ii) embargo's, general shortages of labor, equipment, facilities, materials or supplies in the open market, acts of God, acts of a public enemy, acts of governmental authority, including, without limitation, the Federal Aviation Administration ("FAA"), Department of Transportation ("DOT"), Transportation Safety Administration ("TSA"), Environmental Protection Agency ("EPA"), civil and defense authorities, war (declared or undeclared), invasion, insurrection, terrorism, riots, rebellion or sabotage.

ARTICLE 18
Default and Termination by the County

18.01 Events of Default:

A default shall mean a breach of this Agreement by Management (an "Event of Default"). Without limitation, a default shall include, but shall not be limited to, those defaults defined in Sub-Article 18.02, Sub-Article 18.03, and Sub-Article 18.04, an Event of Default, and may also include one (1) or more of the following occurrences:

- (a) Management has violated the terms and conditions of this Nonexclusive Agreement;
- (b) Management has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of Management's creditors, or Management has taken advantage of any insolvency statute or debtor/creditor law, or Management's affairs have been put in the hands of a receiver;
- (c) Management has failed to obtain the approval of the County where required by this Agreement;
- (d) Management has failed to provide reports, records, book of accounts, summaries, or audits as required by this Agreement;
- (e) Management has failed to perform any covenant of this Agreement;
- (f) Management has failed to provide adequate assurances as required under Sub-Article 18.04;

- (g) Management has failed to comply with any provision of Article 18;
- (h) Management has failed in a representation or warranty stated herein; or
- (i) Management has received three (3) notices of default, of any kind, within a twenty-four (24) month period.

The specification of the preceding as instances of default shall not be deemed to be an exhaustive list of all potential events of default under this Agreement, and the specification of the preceding shall not be interpreted as excluding by implication any other potential event of default.

18.02 Other Defaults:

The County shall have the right, upon thirty (30) calendar days written notice to Management to terminate this Agreement upon the occurrence of any one (1) or more of the following unless the same shall have been corrected within such period:

- (a) Failure of Management to comply with covenants of this Agreement other than those that constitute default pursuant to Sub-Article 18.02.
- (b) The conduct of any business, the performance of any service, or the merchandising of any product or service not specifically authorized herein.
- (c) The entering by Management into any agreement, understanding, arrangement, or contract, whether written or oral, for the referral of customers or potential customers to off-Airport facilities.
- (d) The occurrence of any illegal act within the Facilities of which Management: (i) had prior knowledge, or could reasonably have been expected to have prior knowledge of; (ii) failed to correct; and (iii) failed to notify the Department and responsible authority(ies).

18.03 Habitual Default:

Notwithstanding the foregoing, in the event that Management has frequently, regularly or repetitively defaulted in the performance of or breach any of the terms, covenants and conditions required herein, to be kept and performed by Management, on five (5) occasions regardless of whether Management has cured each individual condition of breach or default as provided for in Sub-Article 18.01 and Sub-Article 18.02 above, Management shall be determined by the Director to be an "habitual violator". At the time that such determination is made the Department shall issue to Management a written notice, advising of such determination and citing the circumstances thereof. Such notice shall also advise Management that there shall be no further notice or grace periods to correct any subsequent breach(s) or default(s) and that any subsequent breach or default, of whatever nature, taken with all previous breaches and defaults, shall be considered cumulative and collectively shall constitute a condition of non-curable

default and grounds for immediate termination of this Agreement. In the event of any such subsequent breach or default, the County may terminate this Agreement upon the giving of written notice of termination to Management, such termination to be effective upon the seventh (7th) day following the date of receipt thereof and all payments due hereunder shall be payable to said date, and Management shall have no further rights hereunder. Immediately upon receipt of said termination, Management shall discontinue its operations at the Airport and proceed to remove all its personal property.

18.04 Notice of Default and Opportunity to Cure:

If an Event of Default occurs, the Department shall notify Management (the "Default Notice"), specifying the basis for such default, and advising Management that such default must be cured immediately or this Agreement with the County may be terminated. Management can cure and rectify the default, to the Department's reasonable satisfaction, within thirty (30) days of actual notice of the Default Notice (the "Cure Period") or such other timeframe as delineated in the Agreement. The Department may extend the Cure Period and grant an additional period of such duration as the Department shall deem appropriate without waiver of any of the County's rights hereunder. The Default Notice shall specify the date by when Management shall discontinue the services under the initial term period (the "Termination Date").

18.05 Adequate Assurances:

When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to Management's ability to perform the work or any portion thereof, the County may request that Management, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of Management ability to perform in accordance with terms and conditions of this Agreement. In the event that Management fails to provide to the County the requested assurances within the prescribed time frame, the County may:

- (A) treat such failure as a repudiation of this Agreement; and
- (B) resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the work or any part
- (C) thereof either by itself or through others.

18.06 Not Used

18.07 Termination For Abandonment:

Except as allowed pursuant to Article 18, this Agreement shall be automatically terminated in its entirety upon the abandonment by Management of the Facilities or the voluntary discontinuance of operations at the Airport for any period of time exceeding twenty four (24) hours, unless such abandonment or discontinuance has

been caused by civil disturbance, governmental order, or Act of God that prevents Management's use of the Facilities for the purposes authorized in Article 2. Such termination shall be considered Termination for Cause, and shall entitle the County to all remedies specified in Sub-article 18.08 herein.

18.08 Termination For Cause:

The County may terminate this Agreement, effective immediately if: (i) Management fails to cure an Event of Default during the Cure Period; (ii) an individual, firm, corporation, joint venture, or other entity attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (iii) a principal of Management is convicted of a felony during the term of this Agreement or any Extension Period, or (iv) if Management is found to have submitted a false certification or to have been, or is subsequently during the term of this Agreement, placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The County may, as a further sanction, terminate or cancel any other agreement(s)/contract(s) that such individual or corporation or joint venture or other entity has with the County and that such individual, corporation or joint venture or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

The foregoing notwithstanding, any individual, firm, corporation, joint venture, or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Management may be subject to debarment for failure to perform, and all other reasons set forth in § 10-38 of the Code.

18.09 Termination Without Cause:

The County may terminate this Agreement, effective immediately if: (i) Management fails to cure an Event of Default during the Cure Period; (ii) an individual, firm, corporation, joint venture, or other entity attempts to meet its contractual obligation(s) with the County through fraud, misrepresentation or material misstatement; or (iii) a principal of Management is convicted of a felony during the term of this Agreement or any Extension Period.

18.10 Actions at Termination:

Management shall, upon receipt of such Termination Notice, and as directed by the Department:

- (a) stop all work on the Termination Date specified in the Termination Notice;

- (b) take such action as may be necessary for the protection and preservation of the Facilities and other County materials and property;
- (c) cancel orders, provided however, that the County shall reimburse Management for all costs and expenses of such cancellation, provided that Management has, within five (5) business days, advised MDAD in writing that there may be cancellation costs, and to the extent known, an estimate of amount of these costs;
- (d) assign to the County and deliver to any location designated by the County any non-cancelable orders not incorporated in the work, provided however, that Management will be compensated for such deliverables that have been specifically developed for the sole purpose of this Agreement;
- (e) vacate, quit and surrender, and account for the Facilities, support space, all furnishings, fixtures, equipment, software, vehicles, records, funds, inventories, commodities, supplies and other property of the County, on or before the Termination Date, with such items to be in as good order and condition as they were upon the Term of this Agreement or date of subsequent acquisition, reasonable and normal wear and tear excepted; and
- (f) remove all of its personal property from the Facilities, support space, on or before the Termination Date. Any personal property of Management not removed in accordance with this Sub-Article may be removed by the Department for storage at the cost of Management. Failure on the part of Management to reclaim its personal property within thirty (30) days from the Termination Date shall constitute a gratuitous transfer of title thereof to the County for whatever use and disposition is deemed to be in the best interests of the County.

NOTE: Any compensation paid pursuant to this Sub-Article is subject to audit.

18.11 Remedies For County:

Upon the termination of the Agreement based upon this Article 18, Management shall make a payment on the Termination Date, to the Department of the amount(s) equal to any monies due the Department under the Agreement. This payment is independent of and in addition to any payments, fees, and remedies available to the County under applicable law or this Agreement. Management shall indemnify and reimburse the Department within forty-five (45) days after the date of such termination, an amount equal to Department's costs for any damages to the Facilities, for failure to perform, or any other breach of the Agreement by Management. In the event the County exercises its termination right as provided hereunder, the County shall not be subject to any liability and shall have no further obligations under this Nonexclusive Agreement. Management shall also be liable to such other relief as the County may be entitled.

18.12 Holdover Tenant:

If Management (or anyone claiming through Management) shall remain in possession of the Facilities or any part thereof after the termination of this Nonexclusive Agreement, without a written agreement executed by the County, then without limiting the County's other rights and remedies, the person or entity remaining in possession shall be deemed a tenant at sufferance otherwise subject to all of the provisions of this Agreement, and Management shall thereafter pay on account of its holdover use and occupancy of the Facilities a sum, at a rate equal to two times (2x) the amount payable monthly as Monthly Management Fee (the "Holdover Charges"). The Holdover Charges shall be payable weekly in advance. Notwithstanding the above, Management shall remain liable to the County for all damages resulting from such breach, with the amount of any Holdover Charges accepted by the County on account of the holdover considered as mitigation of such damages. The covenant in this Sub-Article shall survive the Term and any exercised extensions.

ARTICLE 19

Termination by Management

19.01 Termination by Management:

Management shall have the right, upon thirty (30) calendar days written notice to the Department to terminate this Agreement (note: The Department must acknowledge receipt of the notice) in writing to Management, without liability to the County, at any time after the occurrence of one (1) or more of the following events:

- (a) Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the remaining in force of said injunction for a period of more than one hundred eighty (180) calendar days.
- (b) A breach by the County of any of the material terms, covenants or conditions contained in this Agreement required to be kept by the County and failure of the County to remedy such breach for a period of three hundred sixty five (365) calendar days after receipt of written notice from Management of the existence of such breach.
- (c) The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control or use of the Airport premises or any substantial part, or parts thereof, in such a manner as substantially to restrict the Management's operations for a period of one hundred eighty (180) calendar days.
- (d) Suspension of all scheduled passenger flight operations, whether such suspension is due to governmental action, an act of God, the public enemy,

or other circumstances for a period of one hundred eighty (180) calendar days.

- (e) If the Facilities are rendered unfit for the use and purpose for which this Agreement is granted, without fault on the part of Management, its employees, agents, contractors, subcontractors, vendors, or suppliers for a period of ninety (90) days.

ARTICLE 20

Equal Employment Opportunity, Nondiscrimination and Affirmative Action Programs

20.01 Equal Employment Opportunity:

In accordance with Title 14 Code of Federal Regulation (CFR) Part 152 (Affirmative Action Employment Program), Management shall not discriminate against any employee or applicant for employment because of age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, in accordance with the Americans with Disabilities Act, discriminate against any otherwise qualified employees or applicants for employment with disabilities who can perform the essential functions of the job with or without reasonable accommodation. Management shall take affirmative actions' to ensure that applicants are employed and that employees are treated during their employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, or disability. Such actions include, but not limited to, the following: Employment, upgrading, transfer or demotion, recruitment, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, selection for training including apprenticeship.

Management agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the County setting forth the provisions of this Equal Employment Opportunity clause. Management shall comply with all applicable provisions of the Civil Rights Act of 1964, Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, revised order No. 4 issued December 1, 1951, as amended, and the Americans with Disabilities Act. The Age Discrimination in Employment Act effective June 12, 1968, Executive Order 13166 issued August 11, 2000, Improving Access to Services for persons with Limited English Proficient (LEP), the rules, regulations and relevant orders of the Secretary of Labor, Florida Statutes §112.041, §112.042, §112.043 and the Miami-Dade County Code Sections 11A1 through 13A1, Articles 3 and 4.

Management shall assign responsibility to one of its officials to develop procedures that will assure that the policies of Equal Employment Opportunity and Affirmative Action are understood and implemented.

20.02 Nondiscriminatory Access to Premises:

Management, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant that: (1) no person on the grounds of race, color, sex, national origin or ancestry shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises; (2) that Management shall use the Premises in compliance with all other requirements imposed by or pursuant to the enforceable regulations of the Department of Transportation, as amended from time to time.

20.03 Breach of Nondiscrimination Covenants:

In the event it has been determined that Management has breached any enforceable nondiscrimination covenants contained in Sub-article 20.01 Equal Employment Opportunity and Sub-article 20.02 Nondiscriminatory Access to Premises above, pursuant to the complaint procedures contained in the applicable Federal Regulations, and Management fails to comply with the sanctions and/or remedies which have been prescribed, the County shall have the right to terminate this Agreement pursuant to the Termination of the Agreement section hereof.

20.04 Nondiscrimination:

During the performance of this Agreement, Management agrees as follows: Management shall, in all solicitations or advertisements for employees placed by or on behalf of Management, state that all qualified applicants will receive consideration for employment without regard to age, sex, race, color, religion, marital status, place of birth or national origin, ancestry, physical handicap or disability. Management shall furnish all information and reports required by Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to Management's books, records, accounts by the County and Compliance Review Agencies for purposes of investigation to ascertain by the compliance with such rules, regulations, and orders. In the event of Management's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, and orders, this Agreement may be canceled, terminated, or suspended in whole or in part in accordance with the Termination of Agreement section hereof and Management may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 113155 and such sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

20.05 Disability Non-discrimination Affidavit:

By entering into this Agreement with the County and signing the Disability Nondiscrimination Affidavit, Management attests that this is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If Management or any owner, subsidiary or other firm affiliated with or related to Management is found by the responsible enforcement officer of the Courts or the County to be in violation of the Act or the Resolution, such violation shall render this Contract terminable in accordance with the Termination of Agreement section hereof. This Contract shall be void if Management submits a false affidavit pursuant to this Resolution or Management violated the Act or the Resolution during the term of this Contract, even if Management was not in violation at the time it submitted its affidavit.

Management will include Sub-article 20.01 Equal Employment Opportunity and Sub-article 20.02 Nondiscriminatory Access to Premises of this Article in the Management sub-contracts in excess of \$10,000.00, unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 issued September 24, 1965, as amended by Executive Order 113155, so that such provisions will be binding upon each sub-consultant. Management shall take such action with respect to any sub-contract as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Management becomes involved in, or is threatened with, litigation with a sub-consultant as the result of such direction by the County or by the United States, Management may request the United States to enter into such litigation to protect the interests of the United States.

20.06 Affirmative Action/Nondiscrimination of Employment Promotion and Procurement Practices:

(County Code Section 2-8.1.5): In accordance with the requirements of County Code Section 2-8.1.5, all firms with annual gross revenues in excess of \$5 million seeking to contract with Miami-Dade County shall, as a condition of award, have a written Affirmative Action Plan and Procurement Policy on file with the County's Department of Procurement Management. Said firms must also submit, as a part of their Agreement to be filed with the Clerk of the Board, an appropriately completed and signed Affirmative Action Plan/Procurement Policy Affidavit.

Firms whose Boards of Directors are representative of the population make-up of the nation are exempt from this requirement and must submit, in writing, a detailed listing of their Boards of Directors, showing the race or ethnicity of each board member, to the County's Department of Procurement Management. Firms claiming exemption must submit, as part of their Agreement to be filed with the Clerk of the Board, an appropriately completed and signed Exemption Affidavit in accordance with County Code Section 2-8.1.5. These submittals shall be

subject to periodic reviews to assure that the entities do not discriminate in their employment and procurement practices against minorities and women/owned businesses.

It will be the responsibility of each firm to provide verification of their gross annual revenues to determine the requirement for compliance with the County Code section. Those firms that do not exceed \$5 million annual gross revenues must clearly state so in their Agreement.

ARTICLE 21

Damage or Destruction to Facilities

If the Facilities or a substantial portion thereof are rendered, unfit, or unusable for the use and purpose for which this Agreement is granted, without fault on the part of Management, its employees, agents, or independent contractors, either party shall have the option, without liability to the other party, upon five days notice in writing, to terminate this Agreement.

ARTICLE 22

Rules, Regulations and Permits

22.01 Rules and Regulations:

Management shall comply with: (i) the ordinances of the County including the rules and regulations of the Department; (ii) Chapter 25 of the Code; (iii) operational directives issued hereunder; (iv) all additional laws, statutes, ordinances, regulations and rules of the federal, state and local governments, and any and all plans and programs developed in compliance therewith; (v) any County administrative orders and resolutions of the Board of County Commissioners which may be applicable to its operations or activities under this Agreement; (vi) federal air and safety laws and regulations; and (vii) federal, state, and County environmental, hazardous wastes and materials, and natural resources laws and regulations. Management shall comply with the requirements of Resolution No. R-148-07, Labor Peace; and this Agreement itself is subject to the Independent Private Sector Inspector General Review provisions of Administrative Order 3-20, as such Administrative order may be amended from time to time.

22.02 Violations of Rules and Regulations:

Management represents and agrees to pay, on behalf of the County, any penalty assessment or fine issued against the County, or to defend in the name of the County any claim, assessment or civil action, which may be presented or initiated by any agency or officer of the federal, state or local governments based in whole or substantial part upon a claim or allegation that Management, its agents, employees, contractors, subcontractors, suppliers, or invitees, have violated any law, ordinance, regulation or rule described in Sub-Article 19.01 or

any plan or program developed in compliance therewith. Any such penalty, assessment, or fine shall not be a Reimbursable Expense. Management further represents that the substance of Sub-Article 19.02 and Sub-Article 19.01 shall be included in every contract and other agreements, which Management may enter into related to its operations and activities under this Agreement and that any such contract and other agreement shall specifically provide that "Miami-Dade County, Florida is a third party beneficiary, of this and related provisions." This provision shall not constitute a waiver of any other conditions of this Agreement prohibiting or limiting assignments, subletting or subleasing.

22.03 Permits and Licenses:

Management covenants, represents, and warrants that it shall be strictly liable and responsible to obtain, pay for, maintain current, fully comply with, and make available to the Department upon request, all permits, licenses, and governmental authorizations and approvals, however designated and as may be required by any federal, state, or County governmental entity or judicial body having jurisdiction over Management or its operations and activities, for any activity of Management on the Facilities and for any actions of Management at the Airport, including ensuring that all legal requirements, permits, and licenses necessary for or resulting, directly or indirectly, from Management's operations and activities on the Facilities and Airport have been obtained and are in compliance. The cost for Permits and License(s) are reimbursable by the Department as set forth in Exhibit G.

ARTICLE 23
Civil Actions

23.01 Governing Law-Venue:

This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any action or claim arising from this Agreement shall be in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court in and for the Southern District of Florida.

23.02 Registered Office/Agent Jurisdiction:

Management, if a corporation, shall designate a registered office and a registered agent, as required by Section 48.091, Florida Statutes, and such designations to be filed with the Florida Department of State in accordance with Section 607.034, Florida Statutes. If Management is a natural person, both Management and his or her personal representative(s) hereby submit themselves to the jurisdiction of the courts of the State of Florida for any cause of action based in whole or in part on the alleged breach of this Agreement.

ARTICLE 24
Actions at Termination

24.01 Surrender of Facilities:

On or before the termination date of this Agreement and any exercised extensions, whether by lapse of time or otherwise, in accordance with the provisions contained herein, Management shall vacate, quit and surrender and shall account for the Facilities, all furnishings, fixtures, equipment, vehicles, records, funds, inventories, commodities, supplies and other property of the County in as good order and condition as they were upon the Effective date of this Agreement or date of subsequent acquisition, reasonable and normal wear and tear excepted.

24.02 Amounts Due and Payable:

Upon termination of this Agreement and any exercised extensions, all amounts due and owing between the parties shall become immediately due and payable and any outstanding orders or contracts for goods and services, which cannot be cancelled, shall be assigned by Management to the County or such other party as the Department shall designate.

24.03 Removal of Personal Property:

On or before the termination date of this Agreement and any exercised extensions, except in instances of termination pursuant to Article 19.01 hereof, in which event Management shall be allowed up to five calendar days, Management shall remove all of its personal property from the Facilities. Any personal property of Management not removed in accordance with this Article may be removed by the Department for storage at the cost of Management. Failure on the part of Management to reclaim its personal property within thirty days from the date of termination shall constitute a gratuitous transfer of title thereof to the County for whatever use and disposition is deemed to be the best interests of the County.

ARTICLE 25
Other Provisions

25.01 Payment of Taxes:

Management shall pay any taxes lawfully assessed against Management arising out of its operations hereunder; provided, however, that Management shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in courts of competent jurisdiction to determine the validity of such taxes. Failure to pay same after the ultimate adverse conclusion of such contest shall constitute a default, pursuant to Article 18.

25.02 No Possessory Interests:

No clause, phrase, sentence, paragraph or article of this Agreement shall vest any possessory or leasehold interest in any real property, the Facilities, the Improvements or the personal property of the County described herein in Management nor shall such be construed as creating any landlord and tenant or partnership or joint venture relationship between the County and Management.

25.03 Rights to be Exercised by Department:

Wherever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

25.04 Administrative Modifications:

It is understood and agreed that the Department, upon written notice to Management, shall have the right to modify administratively and to revise the budget, revenue processing, reimbursement, replenishment and payment procedures, contained in Articles 3, 4 and 5, other technical requirements hereof, and the exhibits hereto; provided, however, such revisions shall not have a materially adverse effect on the right of Management to be reimbursed for costs and expenses incurred on a timely basis or to receive reasonable compensation for its services hereunder or on the security of the funds and assets of the County.

25.05 Approvals:

Wherever in this Agreement approval by the County or Department is required, the County or the Department may approve or disapprove same without providing a stated cause for such action.

25.06 Security:

Subject to recommendation from Management as to reasonable and prudent security measures needed and approved by the Department, Management shall be responsible for the security and protection of the Facilities, and the equipment, furnishings, commodities and supplies provided herein.

25.07 Rights of County at Airport:

The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to any structures and facilities at the Airport. The County shall, in the exercise of such right, be free from any and all liability to Management.

25.08 Federal Subordination:

This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the development of the Airport. All provisions of this Agreement shall be subordinate to the right of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of this Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended.

25.09 Severability:

If any provision of this Agreement or the application thereof to either party to this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Agreement which can be given effect without the invalid provision, and to this end, the provisions of this Agreement are severable.

25.10 Authorized Uses Only:

Notwithstanding anything to the contrary herein, Management shall not use or permit the use of the Facilities or the Airport for any illegal or unauthorized purpose nor for any purpose which would invalidate any insurance policies of the County or any policies of insurance written on behalf of Management under this Agreement.

25.11 No Waiver:

There shall be no waiver of the right of the County to demand strict performance of any of the provisions, terms and covenants of this Agreement nor shall there be any waiver of any breach, default or non-performance hereof by Management, unless such waiver is explicitly made in writing by the Department. Any previous waiver or course of dealing shall not affect the right of the County to demand strict performance of the provisions, terms and covenants of this Agreement with respect to any subsequent event or occurrence or of any subsequent breach, default or non-performance hereof by Management.

25.12 Right to Regulate:

Nothing in this Agreement shall be construed to waive or limit the governmental authority of the County, as a political subdivision of the State of Florida, to regulate Management or its operations.

25.13 Entirety of Agreement:

This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and any prior agreements, representations or statements made with respect to such subject matter, whether oral or written, and any contemporaneous oral agreements, representations or statements with respect to such subject matter, are merged herein; provided, however, that Management hereby affirms the completeness and accuracy of the information submitted by Management to the Department in connection with the award of this Agreement.

25.14 Inspections:

The authorized employees and representatives of the County and of any applicable Federal or State agencies having jurisdiction hereof shall have the right of access to the Facilities at all reasonable times for the purposes of inspection and audit to determine compliance with the provisions of this Agreement. This right of inspection and audit shall impose no duty on the County to inspect and audit and shall impart no liability upon the County should it not make any such inspections or audits.

25.15 Headings:

The headings of the various articles and sections of this Agreement, and its Table of Contents, are for convenience and ease of reference only, and shall not be construed to define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.

25.16 Binding Effect:

The terms, conditions and covenants of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

25.17 Performance:

The parties expressly agree that time is of the essence in the performance of this Agreement and that the failure by Management to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the County of any obligation to accept such performance.

25.18 Required Disclosure Affidavits- Condition of Award- Affirmation of Vendor Affidavits

Pursuant to Section 2-8.1(d) of the Code of Miami-Dade County, Proposers are required to complete the Uniform Affidavit Packet (Affidavits including Condition of Award Affidavits and Declaration Form), before being awarded a

new contract. Management affirms that the Vendor Affidavits Form submitted is current, complete and accurate for each affidavit listed therein. The Appendix E-2 must be filled out by Management prior to award of the Agreement. MDAD's Single Form Execution Affidavit and Declaration Form is contained in Appendix E-1 and must be filled out by each Proposer and submitted with the Proposals.

25.19 Notices:

Any notices given under the provisions of this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested to:

TO THE COUNTY:
Director
Miami-Dade Aviation Department
Post Office Box 025504
Miami, Florida 33102-5504

To Management, in care of the General Manager, or to:

Gideon Toal Management Services LLC
Kimberly Wiemuth, Managing Member
500 W. 7th Street, Suite 550
Fort Worth, TX 76102
Phone: (214) 725-4855
Fax: (682)-224-8508
Email: kwiemuth@gideontoal-ms.com

or to such other respective addresses as the parties may designate to each other in writing from time to time. Notices by registered or certified mail shall be deemed given on the delivery date indicated on the return receipt from the United States Postal Service.

IN WITNESS WHEREOF, the County has hereto caused this Agreement to be issued and executed by its appropriate officials, which the Agreement by its execution by its appropriate officials hereby accepts, as of the date first above written.

BOARD OF COUNTY COMMISSIONERS
OF MIAMI DADE COUNTY, FLORIDA

By: _____
Mayor

Attest: Harvey Ruvin, Clerk

By: _____
Deputy Clerk

(COUNTY SEAL)

MANAGEMENT (If Individual or
Partnership):

Name: _____

By: _____
Signature

Print Name

Title: _____

WITNESSES TO ABOVE SIGNATURE:

Signature

Print Name

Signature

Print Name

MANAGEMENT (If Corporation):

GIDEON TOAL MANAGEMENT SERVICES LLC
Name: _____

By: _____
President

Print Name

Attest: _____
Corporate Secretary
Randall C Gideon
Print Name

(CORPORATE SEAL)

**EXHIBIT F:
TENANT AIRPORT
CONSTRUCTION NON-
REIMBURSABLE PROJECTS AND
TENANT AIRPORT
CONSTRUCTION REIMBURSABLE
PROJECTS**

TENANT AIRPORT CONSTRUCTION NON-REIMBURSABLE PROJECTS
and
TENANT AIRPORT CONSTRUCTION REIMBURSABLE PROJECTS

Miami Dade County
Miami Dade Aviation Department
Miami International Airport
May 9, 2002

Tenant Airport Construction Non-Reimbursable Projects (TAC-N)
Design and Construction Procedures
EXHIBIT F

Glossary of Terms

A/E	Tenant's State of Florida Registered Architect or Engineer responsible for the design of the project
GSA	General Service Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC/TAC	Miscellaneous Construction Contract/Tenant Airport Construction
MDAD	Miami Dade Aviation Department
NTP	Notice to Proceed
TAC-N	Tenant Airport Construction Non-reimbursable projects
Tenant	Business Partner, Lessee

General Information

If a tenant wants to improve or expand a leasehold area, the tenant must first contact an MDAD Properties or Commercial Operations Manager to discuss the improvement terms of the revision agreement if the project is acceptable to MDAD.

The MDAD Properties or Commercial Operations Manager will prepare a "QUICK-CHECK FORM" (with attachments), which will be submitted to the MDAD Development Division Manager and other divisions for review and approval. Special consideration is given to its impact upon other adjacent projects underway or proposed. The attachments that will accompany the "QUICK-CHECK FORM" will include but are not limited to the following:

- a. A completed TAC-N Project Information form, copy attached.
- b. Conceptual drawings/sketches.

- c. Tenant's letter which includes a description of the project, copies of a proposed schedule and cost estimate, plus a statement requesting MDAD to approve the conceptual project for design and construction.

Procedures-Design and Construction

1. The MDAD Development Division Manager will assign an MDAD Project Number to the project. If approved, the "QUICK-CHECK FORM" (with attachments) will be submitted to the Facilities Division Manager who will review and assign the project to the MCC/TAC Chief who will then direct the TAC-N Project Manager to monitor the design and construction activities of the project. The TAC-N Project Manager will contact the tenant upon receipt of the project and will forward the TAC-N procedures to the tenant.
2. It is the responsibility of the tenant through its A/E and/or Contractor, as applicable, to:
 - a. Obtain copies of MDAD Record (As-Built) Drawings from the MDAD Technical Support Division by calling 305.876.7057.
 - b. Verify field conditions including but not limited to electrical, mechanical, HVAC, plumbing, water, sewer, structural, connecting points for all utilities/HVAC/fire protection/smoke evacuation, etc.
 - c. Ensure that the design of the project is in compliance with the MDAD Design Guidelines Manuals (MIA Terminal projects only) Guidelines is available on the Internet at (www.miami-airport.com).
 - d. Obtain a copy of the MDAD Asbestos Status Report for the project from the MDAD Environmental Engineering Division. Please call 305.876.8326 to request the report. This report is required by the Miami Dade Building Department for permitting and must be submitted along with the application for a building permit and two sets of plans, signed and sealed by the A/E of Record.
 - e. Coordinate schedules and locations for MIA terminal deliveries at the 2nd floor curbside with MDAD Landside Operations Division. Please call 305.876.7086 for coordination.
 - f. Coordinate schedules and construction within the MIA terminal with the MDAD Terminal Operations Division. Please call 305.876.7082 for coordination.
 - g. Coordinate airside accesses requirements with MDAD Airside Operations Division. Please call 305.876.7482 for coordination.
 - h. Coordinate the issuance of MDAD photo ID badges and requirements for orientation regarding airport security with the MDAD Safety and Security Operations Division. Please call 305.869.4028 for coordination.
 - i. Coordinate "SHUTDOWN PROCEDURES" with the MDAD Engineering Maintenance Division. Please call 305.876.7477 for coordination.

- j. Coordinate requirements and specific procedures relating to permitting for DERM, DEP, dewatering excavating, trenching, stockpiling, maintenance and disposal of contaminated material. With the MDAD Environmental and Airport Engineering Division. Please call 305.869.1063 for coordination.
3. The tenant or the tenant's A/E of Record shall:
- a. Submit 10 sets of 100% construction documents to the TAC-N Project Manager for review. Each sheet of the submitted plans shall be identified with a title box that includes the name, address, and telephone/fax numbers of the owner as follows:

Property Owner: Miami Dade Aviation Department
MDAD Project Manager:
Address: P.O. Box 592075, Miami, Florida 33159

Tel: _____
Fax: 305.876.0996

Project Owner/Lessee: _____

Tenant's Project Manager: _____

Address: _____

Tel: _____

Fax: _____

- The TAC-N Project Manager will submit the sets of construction documents to Consultants and MDAD Staff for a Design Review. This process has a duration period of fourteen (14) calendar days. The Reviewers will fax any issues/comments to the tenant's A/E of Record and to the TAC-N Project Manager within fourteen (14) calendar days of receipt of the plans. The tenant or the tenant's A/E of Record shall confirm receipt of Review Comments with the TAC-N Project Manager on the fifteenth (15) day.
- b. Address the Reviewer's issues/comments to the satisfaction of both parties by fax, meetings, telephone conversations, etc.
- c. Revise the construction documents to reflect the changes required by the Design Reviewers. Submit three sets of 100% construction documents, one (1) of which must be signed and sealed by the tenant's A/E of Record. Reviewers must sign the 100% Back Check form, and return it to the A/E and TAC-N Project Manager.
- The TAC-N Project Manager will review the submittals. The MCC/TAC Chief will then provide the "Letter of Concurrence" to the tenant in order to apply for a building permit for its project. This letter is valid for a period of sixty (60) calendar days from the date of issuance. If the tenant or his A/E of Record has not applied for a building permit within the sixty (60) calendar days, the Letter of Concurrence will have to be reissued.
- d. Provide the Miami Dade Building Department located at Building 5A, 4th Floor, MIA, with a Building Permit application, the TAC-N Letter of Concurrence, a copy of the MARC Report (if required) and two (2) signed and sealed 100% permit sets of the project construction documents. For additional information, please call 305.869.1363.

e. The TAC-N Project Manager will advise the tenant of the Miami Dade GSA, Risk Management Division's insurance requirements. Prior to commencement of construction, provide the TAC-N Project Manager copies of all Certificates of Insurance as required.

f. Submit copies of the Construction Schedule, Design and Construction Budget (Update), and Building Permit to the TAC-N Project Manager prior to commencement of construction.

4. Pre-Construction and Construction Meetings

The TAC-N Project Manager will determine, based on the complexity and magnitude of the project, if a pre-construction meeting is required and if regular construction meetings will be required. If required, the frequency of the construction meetings will be established based on the complexity and duration of the project. Attending the meetings will be the tenant's A/E and contractor, the MDAD representative and others as may be required. If no regular scheduled construction meetings are held, the TAC-N Project Manager or his designee will periodically visit the jobsite. The permit set of drawings is required to be kept and available on the construction site at all times.

5. Project Close-Out

If required, a walk through is scheduled and coordinated through the TAC-N Project Manager. It is the responsibility of the tenant to submit copies of the following, as applicable, to the TAC-N Project Manager:

- a. The signed-off building permit (inspections) within 24 hours of its issuance.
- b. Certificate of Occupancy or Completion within 24 hours of its issuance.
- c. Warranties, manuals, instructions, etc., of any equipment that will be maintained by MDAD.
- d. Record Drawings (As-Built drawings) on Bond paper, two (2) signed and sealed set prepared by the tenant's architect of Record within thirty (30) days from the issuance date of the Certificate of Occupancy or Completion.
- e. Depending upon the size or complexity of the project, the tenant may be requested to provide the TAC-N Project Manager with As-Built Mylar's, 35mm aperture cards or digital files for the project.

The TAC-N Project Manager and the tenant will closeout the project. All documents must be received by the TAC-N Project Manager from the tenant prior to project closeout.

TENANT AIRPORT CONSTRUCTION REIMBURSABLE PROJECTS

PURPOSE

To provide details for the initiation and management of a Tenant Airport Construction Program reimbursable project.

DEFINITIONS

FAA	Federal Aviation Administration A/E Tenant's State Registered Architect or Engineer responsible for the design of the project.
BCC	Board of County Commissioners
GSA	General Services Administration
MARC	Miscellaneous Asbestos Recovery Contract
MCC/TAC	Miscellaneous Construction Contract/Tenant Airport construction
MDAD	Miami Dade Airport Aviation
NTP	Notice to Proceed
PM	Project Manager
TAC-N	Tenant Airport Construction Non-reimbursable projects
Tenant	Business Partner, Lessee

INSTRUCTION

GENERAL INFORMATION

Summary of Department Process for Design and Construction of TAC-R Projects

When an airport tenant wishes to improve or expand a leasehold area, the tenant must contact the MDAD Manager, Properties and Commercial Operations to discuss the proposed improvement or expansion. The Manager, Properties and Commercial Operations or designee determines whether the proposed design and construction will be a reimbursable or non-reimbursable project.

If the determination is that the proposed design and construction are reimbursable, the tenant must submit a letter to MDAD requesting approval to design and construct the project, detailing the proposed construction and providing a proposed schedule and cost estimate.

The Manager, Properties and Commercial Operations or designee prepares an instruction and forwards it to the MDAD Manager, Planning, the MDAD Design Chief, the MDAD Manager, Maintenance Engineering, the MDAD Manager, Terminal Facilities, and others as appropriate, for review and tentative approval.

If tentative approval is denied, the tenant is notified through MDAD Manager, Properties and Commercial Operations.

If tentative approval is given, the tenant is so advised through MDAD Manager, Properties and Commercial Operations and is invited to a meeting with a project conceptual review team which includes the MDAD Manager, Planning, the MDAD Design Chief, the TAC-R chief to discuss the design process, bid and award process, construction and close out process. These discussions will include cost and schedule, and the identification of a TAC-R Project Manager.

There are standard MDAD procedures for the above named processes. However, dependent on the complexity, size, location and cost of the project, the conceptual review team may, through the TAC-R chief, waive certain aspects of these standard procedural requirements.

Procedures for Design and Construction

1. The design of the project will entail the Selection of an Architect/Engineer. The procedures for this activity are outlined in MDAD Procedure FD2-005.

2. Upon selection, the A/E will be required to produce the following:

- (a) A Planning Book in accordance with MDAD Procedure FD1-040-P
- (b) A Project Book in accordance to MDAD Procedure FD1-050-P
- (c) Design Documents in accordance with MDAD Procedure FD3-007-P
- (d) Design includes Contract Formation in accordance with MDAD Procedure FD4-040-P3.

3. Upon satisfactory completion of the design process, the project shall be bid and awarded for construction in accordance with MDAD Procedure FD4-011-P

4. Satisfactory completion of the project is dependent on inspections consistent with MDAD Procedures for Substantial Completion and Beneficial Occupancy as outlined in MDAD Procedures FD5-195-P

5. Upon satisfactory completion of item (4) above the project will be closed out accordance with MDAD Procedures FD5-245-P

6. The Project Manager shall be mindful of the fact that the above core MDAD Procedures, with references to other Procedures, together form the broad spectrum of management structures for the project.

**EXHIBIT G:
REIMBURSABLE OPERATING
COST**

EXHIBIT G

MIAMI-DADE AVIATION DEPARTMENT MIAMI INTERNATIONAL AIRPORT REIMBURSABLE OPERATING COST

CLUB AMERICA PRIVATE LOUNGES

The following categories of operating costs shall be reimbursable unless referenced otherwise in the Agreement:

- Payroll and Related Expenses/Employee Benefits
- Cost of Sales
- Operating Expenses

Each of the cost categories are defined in detail by Department. These cost categories are supporting detail are not necessarily all inclusive. In the event of any conflict between elements of this exhibit and the Management Agreement, the Management Agreement shall govern. This exhibit may be administratively modified in accordance with the Management Agreement.

PAYROLL AND RELATED EXPENSES

Reimbursable payroll and related expenses shall include salaries and wages and employer-paid employee benefits of all personnel employed by Management which are engaged in the operations and administration of certain facilities as described in the Management Agreement.

- Salaries
 - o Full Time
 - o Part time

Payroll Taxes:

- Payroll Taxes (Including Employer FICA)
 - Social Security
 - Unemployment Insurance

EMPLOYEE BENEFITS

Full time employee benefits shall reflect the following only to the extent that they are included in a Department approved budget, paid by Management and are not included in reimbursable salaries and wages. Benefits must be used in the year earned and shall not be carried over to the following year.

Vacation Pay

- > 1 Year = 1 Week
- > 2 Year = 2 Weeks

Holiday Pay

6 Days

Sick Pay

6 Days

COST OF SALES

Food
Liquor
Wine
Beer
Beverage

OPERATING EXPENES

Annual Audit
Janitorial Service
Exterminator Service
Repairs & Maintenance Equipment
Employee ID
Data Processing
Laundry Expense
Uniform Expense
Contract Services
Telephone Service
Utilities
Postage
Subscription
Publications
Bad Debt Expense

Employee Parking
Sales Tax
License/Permits
Credit Card Commission
Employee Training
Repair Supplies
Light Bulbs
Cleaning Supplies
Office Supplies
Print/Stationary
Minor Equipment <\$1,000
Furniture/Fixtures
Housekeeping Supplies
Serviceware
Disposable Serviceware
Management Fee – Fixed
Management Fee - Variable

EXHIBIT H:
REQUEST FOR REPLENISHMENT

EXHIBIT H

MIAMI-DADE AVIATION DEPARTMENT
MIAMI INTERNATIONAL AIRPORT
CLUB AMERICA PRIVATE LOUNGES
REQUEST FOR REPLENISHMENT

MANAGED BY

DATE:

REQUEST NUMBER:

TOTAL REQUEST \$

Attached: Reference Chart of Accounts

[illegible]

Approve

General Manager

Controller

Commercial Operations

Reviewed - Commerical Operations

**EXHIBIT I:
NOT USED**

EXHIBIT J
BUDGET INSTRUCTIONS AND
TWELVE MONTH BUDGET –
CONSOLIDATED AND BY
FACILITY (COMPLETED
EXHIBIT J PROVIDED WITH THE
PROPOSAL)

[illegible]

Collection Management Services

Gideon Toal Management Services

Guided Local
Management Service

[illegible]

Cleontal
Management Services

Gideon Tool Management Services

Gideortol
Management Services

Gideon Tool Management Services

GideonToal
Management Services

[illegible]

Twelve Month Budget – Club J

Original Interim Budget Approved by the Board of Directors
 Adopted by:
 Board of Directors
 December 1, 2014
 President

Gideon Toal
 Management Services

CODE	DESCRIPTION	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Q22	Q23	Q24	Q25	Q26	Q27	Q28	Q29	Q30	Q31	Q32	Q33	Q34	Q35	Q36	Q37	Q38	Q39	Q40	Q41	Q42	Q43	Q44	Q45	Q46	Q47	Q48	Q49	Q50	Q51	Q52	Q53	Q54	Q55	Q56	Q57	Q58	Q59	Q60	Q61	Q62	Q63	Q64	Q65	Q66	Q67	Q68	Q69	Q70	Q71	Q72	Q73	Q74	Q75	Q76	Q77	Q78	Q79	Q80	Q81	Q82	Q83	Q84	Q85	Q86	Q87	Q88	Q89	Q90	Q91	Q92	Q93	Q94	Q95	Q96	Q97	Q98	Q99	Q100	Q101	Q102	Q103	Q104	Q105	Q106	Q107	Q108	Q109	Q110	Q111	Q112	Q113	Q114	Q115	Q116	Q117	Q118	Q119	Q120	Q121	Q122	Q123	Q124	Q125	Q126	Q127	Q128	Q129	Q130	Q131	Q132	Q133	Q134	Q135	Q136	Q137	Q138	Q139	Q140	Q141	Q142	Q143	Q144	Q145	Q146	Q147	Q148	Q149	Q150	Q151	Q152	Q153	Q154	Q155	Q156	Q157	Q158	Q159	Q160	Q161	Q162	Q163	Q164	Q165	Q166	Q167	Q168	Q169	Q170	Q171	Q172	Q173	Q174	Q175	Q176	Q177	Q178	Q179	Q180	Q181	Q182	Q183	Q184	Q185	Q186	Q187	Q188	Q189	Q190	Q191	Q192	Q193	Q194	Q195	Q196	Q197	Q198	Q199	Q200	Q201	Q202	Q203	Q204	Q205	Q206	Q207	Q208	Q209	Q210	Q211	Q212	Q213	Q214	Q215	Q216	Q217	Q218	Q219	Q220	Q221	Q222	Q223	Q224	Q225	Q226	Q227	Q228	Q229	Q230	Q231	Q232	Q233	Q234	Q235	Q236	Q237	Q238	Q239	Q240	Q241	Q242	Q243	Q244	Q245	Q246	Q247	Q248	Q249	Q250	Q251	Q252	Q253	Q254	Q255	Q256	Q257	Q258	Q259	Q260	Q261	Q262	Q263	Q264	Q265	Q266	Q267	Q268	Q269	Q270	Q271	Q272	Q273	Q274	Q275	Q276	Q277	Q278	Q279	Q280	Q281	Q282	Q283	Q284	Q285	Q286	Q287	Q288	Q289	Q290	Q291	Q292	Q293	Q294	Q295	Q296	Q297	Q298	Q299	Q300	Q301	Q302	Q303	Q304	Q305	Q306	Q307	Q308	Q309	Q310	Q311	Q312	Q313	Q314	Q315	Q316	Q317	Q318	Q319	Q320	Q321	Q322	Q323	Q324	Q325	Q326	Q327	Q328	Q329	Q330	Q331	Q332	Q333	Q334	Q335	Q336	Q337	Q338	Q339	Q340	Q341	Q342	Q343	Q344	Q345	Q346	Q347	Q348	Q349	Q350	Q351	Q352	Q353	Q354	Q355	Q356	Q357	Q358	Q359	Q360	Q361	Q362	Q363	Q364	Q365	Q366	Q367	Q368	Q369	Q370	Q371	Q372	Q373	Q374	Q375	Q376	Q377	Q378	Q379	Q380	Q381	Q382	Q383	Q384	Q385	Q386	Q387	Q388	Q389	Q390	Q391	Q392	Q393	Q394	Q395	Q396	Q397	Q398	Q399	Q400	Q401	Q402	Q403	Q404	Q405	Q406	Q407	Q408	Q409	Q410	Q411	Q412	Q413	Q414	Q415	Q416	Q417	Q418	Q419	Q420	Q421	Q422	Q423	Q424	Q425	Q426	Q427	Q428	Q429	Q430	Q431	Q432	Q433	Q434	Q435	Q436	Q437	Q438	Q439	Q440	Q441	Q442	Q443	Q444	Q445	Q446	Q447	Q448	Q449	Q450	Q451	Q452	Q453	Q454	Q455	Q456	Q457	Q458	Q459	Q460	Q461	Q462	Q463	Q464	Q465	Q466	Q467	Q468	Q469	Q470	Q471	Q472	Q473	Q474	Q475	Q476	Q477	Q478	Q479	Q480	Q481	Q482	Q483	Q484	Q485	Q486	Q487	Q488	Q489	Q490	Q491	Q492	Q493	Q494	Q495	Q496	Q497	Q498	Q499	Q500	Q501	Q502	Q503	Q504	Q505	Q506	Q507	Q508	Q509	Q510	Q511	Q512	Q513	Q514	Q515	Q516	Q517	Q518	Q519	Q520	Q521	Q522	Q523	Q524	Q525	Q526	Q527	Q528	Q529	Q530	Q531	Q532	Q533	Q534	Q535	Q536	Q537	Q538	Q539	Q540	Q541	Q542	Q543	Q544	Q545	Q546	Q547	Q548	Q549	Q550	Q551	Q552	Q553	Q554	Q555	Q556	Q557	Q558	Q559	Q560	Q561	Q562	Q563	Q564	Q565	Q566	Q567	Q568	Q569	Q570	Q571	Q572	Q573	Q574	Q575	Q576	Q577	Q578	Q579	Q580	Q581	Q582	Q583	Q584	Q585	Q586	Q587	Q588	Q589	Q590	Q591	Q592	Q593	Q594	Q595	Q596	Q597	Q598	Q599	Q600	Q601	Q602	Q603	Q604	Q605	Q606	Q607	Q608	Q609	Q610	Q611	Q612	Q613	Q614	Q615	Q616	Q617	Q618	Q619	Q620	Q621	Q622	Q623	Q624	Q625	Q626	Q627	Q628	Q629	Q630	Q631	Q632	Q633	Q634	Q635	Q636	Q637	Q638	Q639	Q640	Q641	Q642	Q643	Q644	Q645	Q646	Q647	Q648	Q649	Q650	Q651	Q652	Q653	Q654	Q655	Q656	Q657	Q658	Q659	Q660	Q661	Q662	Q663	Q664	Q665	Q666	Q667	Q668	Q669	Q670	Q671	Q672	Q673	Q674	Q675	Q676	Q677	Q678	Q679	Q680	Q681	Q682	Q683	Q684	Q685	Q686	Q687	Q688	Q689	Q690	Q691	Q692	Q693	Q694	Q695	Q696	Q697	Q698	Q699	Q700	Q701	Q702	Q703	Q704	Q705	Q706	Q707	Q708	Q709	Q710	Q711	Q712	Q713	Q714	Q715	Q716	Q717	Q718	Q719	Q720	Q721	Q722	Q723	Q724	Q725	Q726	Q727	Q728	Q729	Q730	Q731	Q732	Q733	Q734	Q735	Q736	Q737	Q738	Q739	Q740	Q741	Q742	Q743	Q744	Q745	Q746	Q747	Q748	Q749	Q750	Q751	Q752	Q753	Q754	Q755	Q756	Q757	Q758	Q759	Q760	Q761	Q762	Q763	Q764	Q765	Q766	Q767	Q768	Q769	Q770	Q771	Q772	Q773	Q774	Q775	Q776	Q777	Q778	Q779	Q780	Q781	Q782	Q783	Q784	Q785	Q786	Q787	Q788	Q789	Q790	Q791	Q792	Q793	Q794	Q795	Q796	Q797	Q798	Q799	Q800	Q801	Q802	Q803	Q804	Q805	Q806	Q807	Q808	Q809	Q810	Q811	Q812	Q813	Q814	Q815	Q816	Q817	Q818	Q819	Q820	Q821	Q822	Q823	Q824	Q825	Q826	Q827	Q828	Q829	Q830	Q831	Q832	Q833	Q834	Q835	Q836	Q837	Q838	Q839	Q840	Q841	Q842	Q843	Q844	Q845	Q846	Q847	Q848	Q849	Q850	Q851	Q852	Q853	Q854	Q855	Q856	Q857	Q858	Q859	Q860	Q861	Q862	Q863	Q864	Q865	Q866	Q867	Q868	Q869	Q870	Q871	Q872	Q873	Q874	Q875	Q876	Q877	Q878	Q879	Q880	Q881	Q882	Q883	Q884	Q885	Q886	Q887	Q888	Q889	Q890	Q891	Q892	Q893	Q894	Q895	Q896	Q897	Q898	Q899	Q900	Q901	Q902	Q903	Q904	Q905	Q906	Q907	Q908	Q909	Q910	Q911	Q912	Q913	Q914	Q915	Q916	Q917	Q918	Q919	Q920	Q921	Q922	Q923	Q924	Q925	Q926	Q927	Q928	Q929	Q930	Q931	Q932	Q933	Q934	Q935	Q936	Q937	Q938	Q939	Q940	Q941	Q942	Q943	Q944	Q945	Q946	Q947	Q948	Q949	Q950	Q951	Q952	Q953	Q954	Q955	Q956	Q957	Q958	Q959	Q960	Q961	Q962	Q963	Q964	Q965	Q966	Q967	Q968	Q969	Q970	Q971	Q972	Q973	Q974	Q975	Q976	Q977	Q978	Q979	Q980	Q981	Q982	Q983	Q984	Q985	Q986	Q987	Q988	Q989	Q990	Q991	Q992	Q993	Q994	Q995	Q996	Q997	Q998	Q999	Q1000	Q1001	Q1002	Q1003	Q1004	Q1005	Q1006	Q1007	Q1008	Q1009	Q1010	Q1011	Q1012	Q1013	Q1014	Q1015	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Twelve Month Budget – Club F

Annual Financial Report
Club American Private Company
Managed by:
Gideon Toal Management Services
12/1/2019

Gideon Toal
Management Services

CODE	DESCRIPTION	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Q22	Q23	Q24	Q25	Q26	Q27	Q28	Q29	Q30	Q31	Q32	Q33	Q34	Q35	Q36	Q37	Q38	Q39	Q40	Q41	Q42	Q43	Q44	Q45	Q46	Q47	Q48	Q49	Q50	Q51	Q52	Q53	Q54	Q55	Q56	Q57	Q58	Q59	Q60	Q61	Q62	Q63	Q64	Q65	Q66	Q67	Q68	Q69	Q70	Q71	Q72	Q73	Q74	Q75	Q76	Q77	Q78	Q79	Q80	Q81	Q82	Q83	Q84	Q85	Q86	Q87	Q88	Q89	Q90	Q91	Q92	Q93	Q94	Q95	Q96	Q97	Q98	Q99	Q100	Q101	Q102	Q103	Q104	Q105	Q106	Q107	Q108	Q109	Q110	Q111	Q112	Q113	Q114	Q115	Q116	Q117	Q118	Q119	Q120	Q121	Q122	Q123	Q124	Q125	Q126	Q127	Q128	Q129	Q130	Q131	Q132	Q133	Q134	Q135	Q136	Q137	Q138	Q139	Q140	Q141	Q142	Q143	Q144	Q145	Q146	Q147	Q148	Q149	Q150	Q151	Q152	Q153	Q154	Q155	Q156	Q157	Q158	Q159	Q160	Q161	Q162	Q163	Q164	Q165	Q166	Q167	Q168	Q169	Q170	Q171	Q172	Q173	Q174	Q175	Q176	Q177	Q178	Q179	Q180	Q181	Q182	Q183	Q184	Q185	Q186	Q187	Q188	Q189	Q190	Q191	Q192	Q193	Q194	Q195	Q196	Q197	Q198	Q199	Q200	Q201	Q202	Q203	Q204	Q205	Q206	Q207	Q208	Q209	Q210	Q211	Q212	Q213	Q214	Q215	Q216	Q217	Q218	Q219	Q220	Q221	Q222	Q223	Q224	Q225	Q226	Q227	Q228	Q229	Q230	Q231	Q232	Q233	Q234	Q235	Q236	Q237	Q238	Q239	Q240	Q241	Q242	Q243	Q244	Q245	Q246	Q247	Q248	Q249	Q250	Q251	Q252	Q253	Q254	Q255	Q256	Q257	Q258	Q259	Q260	Q261	Q262	Q263	Q264	Q265	Q266	Q267	Q268	Q269	Q270	Q271	Q272	Q273	Q274	Q275	Q276	Q277	Q278	Q279	Q280	Q281	Q282	Q283	Q284	Q285	Q286	Q287	Q288	Q289	Q290	Q291	Q292	Q293	Q294	Q295	Q296	Q297	Q298	Q299	Q300	Q301	Q302	Q303	Q304	Q305	Q306	Q307	Q308	Q309	Q310	Q311	Q312	Q313	Q314	Q315	Q316	Q317	Q318	Q319	Q320	Q321	Q322	Q323	Q324	Q325	Q326	Q327	Q328	Q329	Q330	Q331	Q332	Q333	Q334	Q335	Q336	Q337	Q338	Q339	Q340	Q341	Q342	Q343	Q344	Q345	Q346	Q347	Q348	Q349	Q350	Q351	Q352	Q353	Q354	Q355	Q356	Q357	Q358	Q359	Q360	Q361	Q362	Q363	Q364	Q365	Q366	Q367	Q368	Q369	Q370	Q371	Q372	Q373	Q374	Q375	Q376	Q377	Q378	Q379	Q380	Q381	Q382	Q383	Q384	Q385	Q386	Q387	Q388	Q389	Q390	Q391	Q392	Q393	Q394	Q395	Q396	Q397	Q398	Q399	Q400	Q401	Q402	Q403	Q404	Q405	Q406	Q407	Q408	Q409	Q410	Q411	Q412	Q413	Q414	Q415	Q416	Q417	Q418	Q419	Q420	Q421	Q422	Q423	Q424	Q425	Q426	Q427	Q428	Q429	Q430	Q431	Q432	Q433	Q434	Q435	Q436	Q437	Q438	Q439	Q440	Q441	Q442	Q443	Q444	Q445	Q446	Q447	Q448	Q449	Q450	Q451	Q452	Q453	Q454	Q455	Q456	Q457	Q458	Q459	Q460	Q461	Q462	Q463	Q464	Q465	Q466	Q467	Q468	Q469	Q470	Q471	Q472	Q473	Q474	Q475	Q476	Q477	Q478	Q479	Q480	Q481	Q482	Q483	Q484	Q485	Q486	Q487	Q488	Q489	Q490	Q491	Q492	Q493	Q494	Q495	Q496	Q497	Q498	Q499	Q500	Q501	Q502	Q503	Q504	Q505	Q506	Q507	Q508	Q509	Q510	Q511	Q512	Q513	Q514	Q515	Q516	Q517	Q518	Q519	Q520	Q521	Q522	Q523	Q524	Q525	Q526	Q527	Q528	Q529	Q530	Q531	Q532	Q533	Q534	Q535	Q536	Q537	Q538	Q539	Q540	Q541	Q542	Q543	Q544	Q545	Q546	Q547	Q548	Q549	Q550	Q551	Q552	Q553	Q554	Q555	Q556	Q557	Q558	Q559	Q560	Q561	Q562	Q563	Q564	Q565	Q566	Q567	Q568	Q569	Q570	Q571	Q572	Q573	Q574	Q575	Q576	Q577	Q578	Q579	Q580	Q581	Q582	Q583	Q584	Q585	Q586	Q587	Q588	Q589	Q590	Q591	Q592	Q593	Q594	Q595	Q596	Q597	Q598	Q599	Q600	Q601	Q602	Q603	Q604	Q605	Q606	Q607	Q608	Q609	Q610	Q611	Q612	Q613	Q614	Q615	Q616	Q617	Q618	Q619	Q620	Q621	Q622	Q623	Q624	Q625	Q626	Q627	Q628	Q629	Q630	Q631	Q632	Q633	Q634	Q635	Q636	Q637	Q638	Q639	Q640	Q641	Q642	Q643	Q644	Q645	Q646	Q647	Q648	Q649	Q650	Q651	Q652	Q653	Q654	Q655	Q656	Q657	Q658	Q659	Q660	Q661	Q662	Q663	Q664	Q665	Q666	Q667	Q668	Q669	Q670	Q671	Q672	Q673	Q674	Q675	Q676	Q677	Q678	Q679	Q680	Q681	Q682	Q683	Q684	Q685	Q686	Q687	Q688	Q689	Q690	Q691	Q692	Q693	Q694	Q695	Q696	Q697	Q698	Q699	Q700	Q701	Q702	Q703	Q704	Q705	Q706	Q707	Q708	Q709	Q710	Q711	Q712	Q713	Q714	Q715	Q716	Q717	Q718	Q719	Q720	Q721	Q722	Q723	Q724	Q725	Q726	Q727	Q728	Q729	Q730	Q731	Q732	Q733	Q734	Q735	Q736	Q737	Q738	Q739	Q740	Q741	Q742	Q743	Q744	Q745	Q746	Q747	Q748	Q749	Q750	Q751	Q752	Q753	Q754	Q755	Q756	Q757	Q758	Q759	Q760	Q761	Q762	Q763	Q764	Q765	Q766	Q767	Q768	Q769	Q770	Q771	Q772	Q773	Q774	Q775	Q776	Q777	Q778	Q779	Q780	Q781	Q782	Q783	Q784	Q785	Q786	Q787	Q788	Q789	Q790	Q791	Q792	Q793	Q794	Q795	Q796	Q797	Q798	Q799	Q800	Q801	Q802	Q803	Q804	Q805	Q806	Q807	Q808	Q809	Q810	Q811	Q812	Q813	Q814	Q815	Q816	Q817	Q818	Q819	Q820	Q821	Q822	Q823	Q824	Q825	Q826	Q827	Q828	Q829	Q830	Q831	Q832	Q833	Q834	Q835	Q836	Q837	Q838	Q839	Q840	Q841	Q842	Q843	Q844	Q845	Q846	Q847	Q848	Q849	Q850	Q851	Q852	Q853	Q854	Q855	Q856	Q857	Q858	Q859	Q860	Q861	Q862	Q863	Q864	Q865	Q866	Q867	Q868	Q869	Q870	Q871	Q872	Q873	Q874	Q875	Q876	Q877	Q878	Q879	Q880	Q881	Q882	Q883	Q884	Q885	Q886	Q887	Q888	Q889	Q890	Q891	Q892	Q893	Q894	Q895	Q896	Q897	Q898	Q899	Q900	Q901	Q902	Q903	Q904	Q905	Q906	Q907	Q908	Q909	Q910	Q911	Q912	Q913	Q914	Q915	Q916	Q917	Q918	Q919	Q920	Q921	Q922	Q923	Q924	Q925	Q926	Q927	Q928	Q929	Q930	Q931	Q932	Q933	Q934	Q935	Q936	Q937	Q938	Q939	Q940	Q941	Q942	Q943	Q944	Q945	Q946	Q947	Q948	Q949	Q950	Q951	Q952	Q953	Q954	Q955	Q956	Q957	Q958	Q959	Q960	Q961	Q962	Q963	Q964	Q965	Q966	Q967	Q968	Q969	Q970	Q971	Q972	Q973	Q974	Q975	Q976	Q977	Q978	Q979	Q980	Q981	Q982	Q983	Q984	Q985	Q986	Q987	Q988	Q989	Q990	Q991	Q992	Q993	Q994	Q995	Q996	Q997	Q998	Q999	Q1000	Q1001	Q1002	Q1003	Q1004	Q1005	Q1006	Q1007	Q1008	Q1009	Q1010	Q1011	Q1012	Q1013	Q1014	Q1015	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**Child Welfare
Management Services**

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EXHIBIT K
EXECUTED CONDITION OF
AWARD AFFIDAVITS OF
SUCCESSFUL PROPOSER

**REQUEST FOR PROPOSALS FOR THE
NON-EXCLUSIVE MANAGEMENT
AGREEMENT FOR THE OPERATION OF
CLUB AMERICA PRIVATE LOUNGES AT
MIAMI INTERNATIONAL AIRPORT
RFP NO. MDAD-04-11**

**EXHIBIT K
EXECUTED AFFIDAVITS OF SUCCESSFUL PROPOSER
(CONDITION OF AWARD AFFIDAVITS)**

APPENDIX E-2

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION
VENDOR AFFIRMATION, COLLUSION AND SUDAN/IRAN
AFFIDAVITS AND
CONDITION OF AWARD REQUIREMENTS

COA-1

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APPENDIX E-2

MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT
SINGLE EXECUTION VENDOR AFFIRMATION, COLLUSION AND SUDAN/IRAN
AFFIDAVITS AND CONDITION OF AWARD REQUIREMENTS

The following pages are provided for the Proposer's convenience and are a prerequisite to a contract award:

- Affirmation of Vendor Affidavits
- Collusion Affidavit
- Affidavit – Sanitized Companies with Activities in Sudan or Iran Petroleum Energy Sector Lists
- Subcontractor/Supplier Listing
- Subcontracting Policies Statement
(Also required, but no format (insert page is provided))
- Proof of Authorization to do Business:
(Attach a copy of the Certificate of Status or Authorization per 607.0128 F.S., and certificate evidencing compliance with the Florida Fictitious Name Statute per 865.09 F.S., if applicable.)
(Also required, but no format (insert page is provided))

COA-2

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**MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT SINGLE EXECUTION VENDOR
AFFIRMATION AND COLLUSION AFFIDAVITS**

Affirmation of Vendor Affidavits

In accordance with Ordinance 07-143 amending Section 2-8.1 of the Code of Miami-Dade County, effective June 1, 2008, vendors are required to complete a new Vendor Registration Package, including a Uniform Affidavit Packet (Vendor Affidavit Form), before being awarded a new contract. The undersigned affirms that the Vendor Affidavit Form submitted with the Vendor Registration Package is current, complete and accurate for each affidavit listed below:

Contract No. RFP No. MDAD-04-11 Federal Employer Identification No. (FEIN): 75-2642562

Contract Title: Non-Exclusive Management Agreement for the Operation of Club America Private Lounges at Miami International Airport
Affidavits and Legislation Governing Body:

1. Miami-Dade County Ownership Disclosure Sec. 2-8.1 of the County Code	6. Miami-Dade County Vendor Obligation to County Sec. 2-8.1 of the County Code
2. Miami-Dade County Employment Disclosure County Ordinance No. 90-133, amending Section 2-8.1(d) of the County Code	7. Miami-Dade County Code of Business Ethics Article I, Section 2-8.1(f), and 2-17(b)(1) of the County Code through (e) and (g) of the County Code and County Ordinance No. 00-1 amending Section 2-17.1 (c) of the County Code
3. Miami-Dade County Employment Drug-Free Workplace Certification Sec. 2-8.1.2(b) of the County Code	8. Miami-Dade County Family Leave Article V of Chapter 11 of the County Code
4. Miami-Dade County Disability Non-Discrimination Article I, Section 2-8.1.3 Resolution R-82-00 amending R-88-95	9. Miami-Dade County Living Wage Sec. 2-8.9 of the County Code (if applicable)
5. Miami-Dade County Debarment Disclosure Section 11-38 of the County Code	10. Miami-Dade County Domestic Leave and Reprieve Article 8, Section 11A-60, 11A-67 of the County Code

COLLUSION AFFIDAVIT

(Code of Miami-Dade County Section 2-8.1.1 and 10-43.1) (Ordinance No. 02-113)

I, being duly first sworn, hereby state that the bidder of this contract:

☒ is not related to any of the other parties bidding in the competitive solicitation, and that the contractor's proposal is genuine and not sham or collusive or made in the interest or on behalf of any person not therein named, and that the contractor has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the proposer has not in any manner sought by collusion to secure to the proposer an advantage over any other proposer.

OR

COA-3

8/11

☐ is related to the following parties who bid in the solicitation which are identified and listed below:

Note: Any person or entity that fails to submit this executed affidavit shall be ineligible for contract award. In the event a recommended contractor identifies related parties in the competitive solicitation its bid shall be presumed to be collusive and the recommended contractor shall be ineligible for award unless that presumption is rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submission of such bids or proposals. Related parties shall mean bidders or proposers or the principals, corporate officers, and managers thereof which have a direct or indirect ownership interest in another bidder or proposer for the same agreement or in which a parent company or the principals thereof or one (1) bidder or proposer have a direct or indirect ownership interest in another bidder or proposer for the same agreement. Bids or proposals found to be collusive shall be rejected.

**AFFIDAVIT - SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN OR IRAN
PETROLEUM ENERGY SECTOR LISTS FLORIDA STATUTES 215.473**

Pursuant to 215.473, F.S., the Gideon Toal Management Services LLC ("Entity") must disclose, if the Entity or any of its officers, directors, or executives are doing certain types of business in or with Sudan and Iran.

Indicate below if the above named Entity, as of the date of submission:

XX has not engaged in commerce in any form in Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

 has engaged in commerce with Sudan or Iran, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

COA-4

8/11

Project No. MBAD-04-11

LOUNGE AT HEART INTERNATIONAL AIRPORT

Prime Entity/Respondent Signature

Print Name: Tim Bernuth

Managing Member
Pratibha

Date 12/5/11

(Duplicate if additional space is needed)

COPIES

This single execution shall have the same force and effect as if each of the above affidavits had been individually executed.


(Signature of Authorized Representative)


KIMBERLY K. TREMUTH
(Print Name of Authorized Representative)

Title Managing Member/President

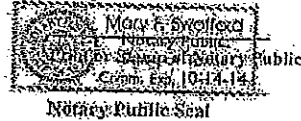
Date: 11/21/11

Notary Public Information

Notary Public, State of Texas County of Tarrant
Subscribed and sworn to (or affirmed) before me this 2nd day of November 20 11
by Kimberly K. Tremuth He or she is personally known to me ☒ or has produced ID ☐
Type of Identification produced N/A


Signature of Notary Public
12-26-14
Expiration Date

1114
Social Number



COA-5

8/11

EXHIBIT L
LABOR PEACE AGREEMENT

STATEMENT

Gideon Toal Management Services, LLC. has not been contacted by any labor union regarding RFP MDAD-04-11 Request for Proposals for the non-exclusive management agreement for the operation of Club America private Lounges at Miami International Airport.

EXHIBIT M
RESOLUTION R-456-07 TRANS FAT
AFFIDAVIT

**REQUEST FOR PROPOSALS FOR THE
NON-EXCLUSIVE MANAGEMENT AGREEMENT
FOR THE OPERATION OF CLUB AMERICA
PRIVATE LOUNGES AT MIAMI INTERNATIONAL AIRP
RFP NO. MDAD-04-11**

EXHIBIT M

**MIAMI-DADE COUNTY
MIAMI-DADE AVIATION DEPARTMENT RESOLUTION NO. 456-07 PROHIBITING
COUNTY AND PUBLIC HEALTH TRUST EMPLOYEES FROM USING PRODUCTS
CONTAINING TRANS FATS**

Approved _____ Mayor

Veto _____

Override _____

Agenda Item No. 11(A) (30)

04-24-07

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

RESOLUTION NO. R-456-07

RESOLUTION PROHIBITING COUNTY AND PUBLIC HEALTH TRUST EMPLOYEES FROM USING TRANS FATS OR ANY PRODUCT CONTAINING TRANS FATS IN FOODS PREPARED BY MIAMI-DADE COUNTY OR THE PUBLIC HEALTH TRUST; DIRECTING THE COUNTY AND PUBLIC HEALTH TRUST NOT TO ENTER INTO, RENEW OR EXTEND ANY CONTRACT UNLESS THE CONTRACTOR, VENDOR, SUPPLIER OR LESSEE AGREES NOT TO USE TRANS FATS; DIRECTING COUNTY STAFF NOT TO PURCHASE PRODUCTS THAT CONTAIN TRANS FATS ON ALL EXISTING CONTRACTS

WHEREAS, trans fats are chemically-engineered cooking oils that, at high levels of consumption, have been found to increase LDL ("bad") cholesterol and decrease HDL ("good") cholesterol; and

WHEREAS, trans fats are found in fried foods and baked goods, including french fries, doughnuts, pastries, pie crusts, biscuits, pizza dough, snack chips, cookies, crackers, margarines, and shortenings; and

WHEREAS, trans fats harden artery walls, increasing blood pressure, and increase dangerous inflammation that can contribute to the onset of diabetes; and

WHEREAS, effective January 1, 2006, the Food and Drug Administration (FDA) required food companies to list trans fats content separately on the Nutrition Facts panel of all packaged foods, such as snack chips and cookies; and

WHEREAS, the FDA's action has caused many food manufacturers, such as Frito-Lay, Pepperidge Farms, Country Crock, Lean Cuisine, and Kellogg's, to reformulate their foods to be able to show that their products have no trans fats; and

WHEREAS, the American Heart Association supports regulatory efforts to reduce trans fats in packaged foods, baked goods and restaurant meals, but encourages a comprehensive "phased-in approach" to eliminating the use of trans fats, which ensures that a sufficient supply of healthier alternative cooking oils and shortenings are available to restaurants and bakeries to prevent the substitution of unhealthy alternatives; and

WHEREAS, the Miami-Dade Public Schools recently prohibited the use of trans fats in foods prepared by the Miami-Dade Public Schools beginning with the 2007-08 school year; and

WHEREAS, eliminating or reducing the consumption of artificial trans fats has the promise of substantially improving the public health, and correspondingly reducing health care costs,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Prohibits County and Public Health Trust employees from using trans fats or any product containing trans fats, in foods prepared by Miami-Dade County or the Public Health Trust in facilities such as hospitals and jails; and requires County and Public Health Trust employees to use healthier alternatives notwithstanding any other provision of this resolution.

Section 2. Directs the County and the Public Health Trust not to enter into, renew or extend any contract unless the contractor, vendor, supplier or lessee agrees as part of the contract, renewal or extension:

1. Not to use trans fats in any food provided to the County or Public Health Trust;
2. Not to sell or otherwise provide to the County or Public Health Trust prepackaged foods that contain trans fats, including cookies, crackers and snack chips;
3. Not to sell or otherwise provide to the County or Public Health Trust prepared foods that contain trans fats, including catered foods;

4. Not to make available for sale or consumption at facilities owned or operated by the County or Public Health Trust food products that contain trans fats, including prepared and prepackaged foods; and
5. To use healthier substitutes in place of trans fats in all of the above-referenced circumstances.

Section 3. Directs County staff not to purchase products that contain trans fats, and instead purchase products that contain healthier alternatives, on all existing contracts where the County has the option but not the requirement to purchase or make available products that contain trans fats.

Section 4. Urges all current County and Public Health Trust contractors, vendors, suppliers and lessees to immediately discontinue using trans fats in food they provide the County and Public Health Trust or make available for sale at facilities owned or operated by the County or Public Health Trust, including prepared and prepackaged foods, and replace trans fats and products that contain trans fats with healthier substitutes.

Section 5. Directs the County Manager to provide all County contractors, vendors, suppliers and lessees that prepare, provide, or sell products containing trans fats a copy of this resolution.

The foregoing resolution was sponsored by Commissioner Katy Sorenson, Commissioner Jose "Pepe" Diaz, Commissioner Carlos A. Gimenez, Commissioner Sally A. Heyman, Commissioner Dennis C. Moss, Commissioner Dorrin D. Rolle, Commissioner Rebeca Sosa and Senator Javier D. Souto and offered by Commissioner

Carlos A. Gimenez, who moved its adoption. The motion was seconded by Commissioner Dennis C. Moss and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	aye	
Barbara J. Jordan, Vice-Chairwoman	aye	
Jose "Pepe" Diaz	aye	Audrey M. Edmonson absent
Carlos A. Gimenez	aye	Sally A. Heyman absent
Joe A. Martinez	aye	Dennis C. Moss aye
Dorin D. Rolle	aye	Natacha Seijas absent
Katy Sorenson	aye	Rebeca Sosa aye
Sen. Javier D. Souto	aye	

The Chairman thereupon declared the resolution duly passed and adopted this 24th day of April, 2007. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **KAY SULLIVAN**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

JMM

Jess M. McCarty

MEMORANDUM

Agenda Item No. 11 (A) (30)

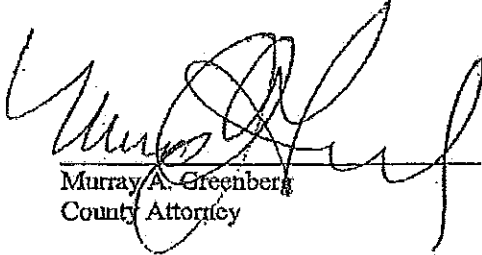
TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: April 24, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Resolution prohibiting
County and Public Health
Trust Employees from using
trans fats in foods prepared
by Miami-Dade County or
the Public Health Trust

The accompanying resolution was prepared and placed on the agenda at the request of Commissioner Katy Sorenson, Commissioner Jose "Pepe" Diaz, Commissioner Carlos A. Gimenez, Commissioner Sally A. Heyman, Commissioner Dennis C. Moss, Commissioner Dorrin D. Rolle, Commissioner Rebeca Sosa and Senator Javier D. Souto.



Murray A. Greenberg
County Attorney

MAG/dcp



MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

DATE: April 24, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No. 11(A) (30)

Please note any items checked.

_____ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised

_____ 6 weeks required between first reading and public hearing

_____ 4 weeks notification to municipal officials required prior to public hearing

_____ Decreases revenues or increases expenditures without balancing budget

_____ Budget required

_____ Statement of fiscal impact required

_____ Bld waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

EXHIBIT N

LETTER OF CREDIT

(To be provided within twenty (20) calendar days of the Effective Date of this Agreement.)